

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 89

AUTOMOBILE CLUB OF MICHIGAN, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., Nov. 26, 1956

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[fol. 1] **IN THE UNITED STATES COURT  
OF APPEALS FOR THE SIXTH CIRCUIT**

No. 12247

**AUTOMOBILE CLUB OF MICHIGAN, Petitioner and Appellant,**

**vs.**

**COMMISSIONER OF INTERNAL REVENUE,  
Respondent and Appellee**

**Appeal from the Tax Court of the United States**

**Appendix for Appellant**

[fol. 2] **BEFORE THE TAX COURT OF THE UNITED STATES**

**Docket Entries**

1952

Sept. 16. Hearing had before Judge Withey on the merits; filed at hearing, petitioner's motion for leave to file amended petition, granted, served; amended petition, served; answer to amended petition, served; appearance of Raymond H. Berry, Esq., and A. H. Moorman, Jr., Esq.; briefs due 11/17/52; replies due 12/17/52; stipulation of facts with petitioner's Exhibits 1 through 22 and Respondent's Exhibits A and B.

Sept. 29. Transcript of hearing 9/16/52 filed.

1953

Apr. 16. Brief filed by General Counsel; served at counter 4/17/53.

Sept. 23. Findings of fact and opinion rendered; Judge Withey; decision will be entered under Rule 50; copy served.

[fol. 3] BEFORE THE TAX COURT OF THE UNITED STATES

**Amended Petition—Filed September 16, 1952**

The above-named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols: Detroit Division: IT Conf.) dated February 2, 1950 and as the basis of this proceeding alleges as follows:

1. Petitioner, Automobile Club of Michigan, is a non-profit corporation organized and existing under and by virtue of the laws of the State of Michigan with its principal place of business at 139 Bagley Avenue, Detroit 26, Michigan.

2. The corporation's income tax returns, excess profits tax returns, and declared-value excess profits tax returns for the taxable years here involved were filed with the Collector of Internal Revenue for the District of Michigan at Detroit, Michigan.

3. The notice of deficiency, a copy of which is attached hereto and marked Exhibit A, was mailed to petitioner on February 2, 1950.

4. The taxes in controversy are corporation income taxes and corporation excess profits taxes for the calendar years 1943 to 1947, inclusive, in the aggregate amount of \$447,445.44 as follows:

Years	Income Tax	Excess Profits Tax
1943.....	\$ 49,016.97	\$128,953.72
1944.....	48,781.99	157,307.29
1945.....	42,373.66	.....
1946.....	13,645.94	.....
1947.....	7,365.87	.....
	<hr/>	<hr/>
	\$161,184.43	\$286,261.01

[fol. 4] 5. The determination of taxes set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in determining that the Automobile Club of Michigan is not an organization exempt from taxes for the taxable years 1943 to 1947, inclusive, under the provision of Section 101 of the Internal Revenue Code.

(b) The Commissioner of Internal Revenue erred in holding that the entire amount of membership dues received by petitioner during each of the taxable years 1943 to 1947, inclusive, must be included in income for the year of receipt under the provisions of Sections 41 and 42 of the Internal Revenue Code.

(c) The Commissioner of Internal Revenue erred in changing the method of accounting regularly employed in keeping the books of the petitioner with respect to membership dues from the accrual to the cash basis.

(d) The Commissioner of Internal Revenue erred in determining that gross income should be increased for the years 1943 to 1947, inclusive, by the following amounts representing the alleged difference in reporting membership dues on the cash basis rather than on the accrual basis:

1943	.....	\$132,935.67
1944	.....	84,023.19
1945	.....	78,515.41
1946	.....	172,924.05
1947	.....	85,356.41

and in failing to determine that gross income should be increased for the years 1943 to 1947, inclusive, by the following amounts of membership dues actually received, if taxable on the cash basis rather than on the accrual basis:

[fol. 5-6] 1943	.....	\$132,742.37
1944	.....	82,879.34
1945	.....	77,198.81
1946	.....	145,919.02
1947	.....	64,523.82

(e) The Commissioner of Internal Revenue erred in failing to determine that if petitioner's accounts are to be placed on a cash basis in respect to membership dues, its accounting for advertising revenues should likewise be placed on a cash basis and advertising revenues should be taken into gross income when received rather than as earned.

[fol. 7] (p) The Commissioner of Internal Revenue erred in determining deficiencies in corporation income tax and corporation excess profits tax against petitioner for the years 1943, 1944 and for the period January 1, 1945 to July 16, 1945 retroactively, petitioner having been specifically exempted from payment of taxes or filing returns for said periods.

(q) The Commissioner of Internal Revenue erred in determining deficiencies in corporation income and excess profits taxes for the years 1943 and 1944 in any amount whatsoever since he was barred by the tolling of the Statute of Limitations from making such determination.

(r) The Commissioner of Internal Revenue erred in determining that there are deficiencies in corporation income tax and corporation excess profits tax due from petitioner for the years 1943 to 1947, inclusive, in any amount whatsoever.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner is a non-profit corporation organized and existing under and by virtue of the laws of the State of Michigan and upon a non-share basis. Its [fol. 8] principal place of business is at 139 Bagley Avenue, Detroit 26, Michigan. The corporate charter remains in full force and effect at the date hereof.

(b) Petitioner was organized as an automobile club, and is supported by members' subscriptions, the receipts from which, together with the receipt of money from other sources, were and are used to assist in securing the adoption and enforcement of reasonable and useful traffic ordinances and motor vehicle laws; to promote the establishment and construction of permanent



highways; to interest automobile owners and drivers in the principles of safety as applied to traffic; to promote touring and to obtain and furnish touring information; to provide and promote the necessary sign-boarding of public highways and streets; to furnish emergency road service to automobile owners; to secure accurate information relative to Michigan's recreational facilities and to properly distribute such information; to cooperate with any work or movement which will tend to benefit the automobile driver, user, owner or manufacturer; and to furnish any and all other service that may be demanded by or prove beneficial to automobile owners in general.

(c) The functions of petitioner are carried out by its officers and employees under the direction of a Board of Directors which is elected each year and holds regular meetings. The members of the Board of Directors serve without compensation.

(d) The membership of petitioner consists of honorary members, life members and active members. During the years here involved active members were required to pay annual dues of \$10.00, which was increased to \$12.00 effective October 1, 1946. The number of active members belonging to petitioner club for said years was as follows:

[fol. 9-12] 1943	212,865
1944	224,092
1945	243,630
1946	261,695
1947	244,994

(e) The money received from dues and from other sources is used solely to provide services for the benefit of petitioner's members and no part thereof is distributed to the members or other persons, except as salaries to employees for services rendered by them.

(f) The Bureau of Internal Revenue issued a ruling under date of June 11, 1934, that petitioner was entitled to exemption from Federal income tax under the provisions of Section 103 (9) of the Revenue Act of 1932. This ruling was reaffirmed on July 5, 1938, under the provisions of the Revenue Act of 1936. Under date of

July 16, 1945, the Deputy Commissioner of Internal Revenue issued a letter addressed to petitioner revoking the exempt status of petitioner and requiring it to file tax returns retroactively for the years 1943 and 1944 and for subsequent years.

(g) In compliance with the requirement of the Deputy Commissioner of Internal Revenue in his letter of July 16, 1945, petitioner filed corporation income tax, excess-profits tax and capital stock tax returns for the years 1943 and 1944 and subsequently for all later years with the Collector of Internal Revenue for the District of Michigan at Detroit, Michigan. The corporation income tax returns and excess profits tax returns filed by petitioner for each of the years here involved were filed under protest and did not reflect any tax as due thereon, it being the position of petitioner that it was exempt from said taxes. Capital stock tax returns were filed and the tax shown thereon was paid.

[fol. 13] (p) Petitioner filed a return for the calendar year 1943 on Form 990 as required by the Regulations of Commissioner of Internal Revenue on or about August 7, 1944, and a return for the calendar year 1944 on Form 990 on or about May 11, 1945. Said returns constituted returns within the meaning of Section 275 of the Internal Revenue Code and the filing thereof started the running of periods of limitation for the assessment of taxes under Chapter 1 and Chapter 2 E of the Internal Revenue Code.

(q) Petitioner has always regularly kept its books of account on the accrual basis. With reference to membership dues, petitioner has consistently followed the practice of crediting dues as received (except for the amount of \$1.00 of such dues treated as the subscription price of its membership magazine) to a deferred income account and has taken such dues into income only as they were earned. Any member of the club who resigned during the period of his membership is entitled to receive and does receive a refund of the unearned portion of the dues paid by him. The membership dues earned by petitioner during the years here involved and properly constituting items of gross

income for said years were correctly reported on its corporation income and excess profits tax returns.

(r) Petitioner is entitled to determine its excess profits credit either on the invested capital basis or on the average earned basis whichever method produces the greater credit. In the event that receipts from membership dues are taken into income only when earned, petitioner will be entitled to compute its excess profits credit on the basis of its average base period net income. If petitioner is required to report its dues as [fol. 14] income when received, it will be entitled to compute its excess profits credit upon the invested capital basis. Petitioner's invested capital at January 1, 1943 was in an amount not less than \$2,293,309.52 and its excess profits credit on the invested capital basis for 1943 was not less than \$183,464.76.

(w) In the event petitioner's membership dues are taken into account when received, as determined by the Commissioner, the amounts of such dues received by petitioner during the years here in question were greater than the dues shown on the returns by the following amounts:

[fol. 15]	1943.....	\$132,742.37
	1944.....	82,879.34
	1945.....	77,198.81
	1946.....	145,919.02
	1947.....	64,523.82

(x) During the years here in question petitioner credited certain of its advertising revenues to a deferred income account. In the event such advertising revenues were taken into gross income when received, petitioner's gross income for the years 1943 to 1945 inclusive, would be reduced below the amounts determined by the Commissioner by the following amounts:

1943.....	\$267.25
1944.....	945.48
1945.....	330.00

Wherefore, petitioner prays that this Court may hear the proceeding and determine that there are no deficiencies due

from petitioner for corporation income tax or for corporation excess profits tax for any of the years from 1943 to 1947, inclusive, in any amount whatsoever.

Dated: Detroit, Michigan, September 4, 1952.

"Raymond H. Berry", "Ralph W. Barbier",  
 "Donald D. MacFarlane", "A. H. Moorman, Jr.",  
 "Roy Tolleson, Jr.", Attorneys for Petitioner,  
 1000 Penobscot Building, Detroit 26, Michigan.

[fol. 16] *Duly sworn to by J. C. Sasser, jurat omitted in printing.*

[fol. 17] **Exhibit "A" to Amended Petition.**

Form 1279 (Rev. July 1949)

**TREASURY DEPARTMENT  
 INTERNAL REVENUE SERVICE**

February 2, 1950

Office of  
**INTERNAL REVENUE**

Agent in Charge  
 Detroit Division

1800 Penobscot Bldg.  
 Detroit 26, Michigan  
 IT:Conf.

Automobile Club of Michigan  
 139 Bagley Avenue  
 Detroit 26, Michigan

Gentlemen:

You are advised that the determination of your income tax liability for the taxable years 1943, 1944, 1945, 1946 and 1947, discloses deficiencies in the total amount of \$161,184.43; and that the determination of your excess profits tax liability for the taxable years 1943 and 1944,



discloses deficiencies in the total amount of \$286,261.01, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Detroit 26, Michigan for [fol. 18] the attention of IT:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

Geo. J. Schoeneman, Commissioner,

By Geo. E. Neal, Internal Revenue Agent in Charge

Enclosures:

Statement  
Form of Waiver

IT:Conf.



## STATEMENT

Automobile Club of Michigan  
139 Bagley Avenue  
Detroit 26, Michigan

TAX LIABILITY FOR TAXABLE YEARS ENDED  
December 31, 1943 to 1947, Inclusive

## INCOME TAX

Years	Liability	Deficiency
1943.....	\$ 49,016.97	\$ 49,016.97
1944.....	48,781.99	48,781.99
1945.....	42,373.66	42,373.66
1946.....	13,645.94	13,645.94
1947.....	7,365.87	7,365.87
Totals.....	\$161,184.43	\$161,184.43

  

EXCESS PROFITS TAX		
1943.....	\$128,953.72	\$128,953.72
1944.....	157,307.29	157,307.29
Totals.....	\$286,261.01	\$286,261.01

[fol. 19] In making this determination of your income and excess profits tax liability, careful consideration has been given to the reports of examination dated January 8, 1947, and April 2, 1948; to your protests received June 9, 1947, and June 29, 1948, and to the statements made at conferences held on July 25, 1947, April 5, 1949, August 3, 1949, and October 19, 1949.

Automobile Club of Michigan

—2—

Statement

It is determined that the Automobile Club of Michigan is not an organization exempt from taxation for the taxable years 1943 to 1947, inclusive, under the provisions of Section 101(9) of the Internal Revenue Code.

It is held that the entire amount of membership dues received during the taxable years 1943 to 1947, inclusive, must be included in income for the years of receipt under the provisions of Sections 41 and 42 of the Internal Revenue Code and net incomes have therefore been increased in several years as follows:

Year	Amount
1943 .....	\$132,935.67
1944 .....	84,023.19
1945 .....	78,515.41
1946 .....	172,924.08
1947 .....	85,356.41

Depreciation as claimed on returns for the taxable years 1943 and 1947, inclusive, have been determined to be in excess of that allowable under the provisions of Section 23(1) of the Internal Revenue Code and disallowances as more fully explained in detail in exhibit attached hereto have been made in the following amounts:

Year	Amount
1943 .....	\$ 1,066.59
1944 .....	1,066.59
1945 .....	1,066.59
1946 .....	1,066.59
1947 .....	22,115.26

[fol. 20] The excess profits credits shown on your returns, which are based on the income method, have been used in the computations of the deficiencies set forth herein, inasmuch as the issues in controversy have a bearing on the method to be used.

Automobile Club of Michigan

—3—

Statement

A copy of this letter and statement has been mailed to your representatives, Mr. Raymond H. Berry, 1000 Penobscot Building, Detroit 26, Michigan, and Mr. Taylor H. Soeber, 2000 Buhl Building, Detroit 26, Michigan, in accordance with authority contained in a power of attorney executed by you and on file in the Bureau.

#### BEFORE THE TAX COURT OF THE UNITED STATES

#### Answer to Amended Petition—Filed September 16, 1952

Comes now the Commissioner of Internal Revenue, by his attorney, Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and for answer to amended petition filed herein, admits, denies, avers and affirmatively alleges as follows:

1. Admits that the petitioner, Automobile Club of Michigan, is a corporation organized and existing under and by virtue of the laws of the State of Michigan with its office

and principal place of business at 139 Bagley Avenue, Detroit 26, Michigan. Denies the remaining allegations contained in paragraph 1 of the amended petition.

2 and 3. Admits the allegations contained in paragraphs 2 and 3 of the amended petition.

4. Admits that the taxes in controversy are income tax for the taxable years ended December 31, 1943, 1944, 1945, 1946 and 1947, and excess profits tax for the taxable years ended December 31, 1943 and 1944, as alleged in paragraph 4 of the amended petition, in the following respective amounts:

[fol. 21]

Year	Income Tax	Excess Profits Tax
1943 .....	\$ 49,016.97	\$128,953.72
1944 .....	48,781.99	157,307.29
1945 .....	42,373.66	—0—
1946 .....	13,645.94	—0—
1947 .....	7,365.87	—0—
	<hr/> \$161,184.43	<hr/> \$286,261.01

5. (a) to (p), inclusive. Denies that the Commissioner erred as alleged in subparagraphs (a) to (p), inclusive, of paragraph 5 of the amended petition.

(q) Denies that the Commissioner erred as alleged in subparagraph (q) of paragraph 5 of the amended petition; and avers that petitioner, Automobile Club of Michigan, duly executed and delivered to the respondent the following successive consents fixing the period of limitation upon assessment of its income and excess profits taxes (Form 872) whereby it consented and agreed that the amounts of any income, excess profits or war profits taxes due under any return made by or on behalf of said corporation for the taxable years ended December 31, 1943 and 1944, could be assessed at any time shown below:

Year	Date of Consents	Expiration Date of Consents
1943	August 25, 1948	June 30, 1949
	May 23, 1949	June 30, 1950
1944	August 25, 1948	June 30, 1949
	May 23, 1949	June 30, 1950

The said consents were duly and timely accepted and executed by the respondent and the notice of deficiency, which

forms the basis of this proceeding, was mailed to the petitioner on February 20, 1950, before the expiration dates of the last consents as above indicated.

5. (r) Denies that the Commissioner erred as alleged in subparagraph (r) of paragraph 5 of the amended petition. [fol. 22] Denies the allegations of fact contained in subparagraphs (a) to (e), inclusive, of the unnumbered paragraph commencing with the second paragraph on page 7 of the amended petition.

(f) Admits the allegations of fact contained in subparagraph (f) commencing at the bottom of page 8, of said unnumbered paragraph of the amended petition.

(g), (h) and (i) Denies the allegations of fact contained in subparagraphs (g), (h) and (i) commencing on page 9 of said unnumbered paragraph of the amended petition.

(j) Admits that on April 12, 1926 the petitioner acquired the lessee's interest in a lease on premises at 139 Bagley Avenue, Detroit, Michigan, which lease was dated June 19, 1916, and was for a term commencing June 1, 1916, and terminating ninety-nine years thereafter, and that the consideration which the petitioner paid for the assignment of such lease was \$275,000.00. Denies the remaining allegations of fact contained in subparagraph (j) appearing on page 11 of said unnumbered paragraph of the amended petition.

(k) Admits that prior to December 31, 1936, petitioner capitalized on its books additions to the furniture and fixtures account and the leasehold improvements and building alterations account, and periodically made provision for depreciation and amortization with respect thereto. At December 31, 1936, the petitioner charged to its surplus account the undepreciated balance of these accounts. Admits further that the cost of the leasehold interest which the petitioner acquired on premises at 139 Bagley Avenue, Detroit, Michigan, on April 12, 1926, was \$275,000.00, which the petitioner paid in annual installments, the last of which installment was made on or about July 1, 1941, and that petitioner charged off to expense such amounts of installments in the years in which they were made. Admits further that both prior to December 31, 1936, and subsequent to that date, petitioner capitalized on its books additions to

the automobiles and trucks account and periodically made provision for depreciation with respect thereto on the [fol. 23] basis of a four-year life. Denies the remaining allegations of fact contained in subparagraph (k) appearing on page 11 of said unnumbered paragraph of the amended petition.

(l) Denies the allegations of fact contained in subparagraph (l) appearing at the top of page 12 of said unnumbered paragraph of the amended petition.

(m) Admits that the term of the lease on the premises at 139 Bagley Avenue, Detroit, Michigan, was for a term of ninety-nine years commencing June 1, 1916; that petitioner acquired the lease on April 12, 1926; and further admits that at January 1, 1943, the lease had an unexpired term of seventy-two years and five months. Denies the remaining allegations of fact contained in subparagraph (m) appearing on page 12 of said unnumbered paragraph of the amended petition.

(n) to (x), inclusive. Denies the allegations of fact contained in subparagraphs (n) to (x), inclusive, commencing on page 12 of said unnumbered paragraph of the amended petition.

6. Denies generally and specifically each and every allegation in the amended petition not hereinbefore expressly admitted, qualified or denied.

Further Answering, respondent affirmatively alleges, particularly with reference to subparagraph (q) of paragraph 5 of the amended petition, as follows:

7. Respondent reiterates the statements and allegations contained in subparagraph (q) of paragraph 5 as stated on page 2 of this answer to amended petition, and, in further reference thereto, alleges that the petitioner, during the taxable years ended December 31, 1943 and 1944, was in receipt of gross income of over \$2,000,000.00, for each — such taxable years. The petitioner, having failed to file Federal tax returns for the taxable years ended December 31, 1943 and 1944, as a consequence omitted reporting such gross income in those years which amounts were properly includible therein, and, therefore, the resulting income and excess profits tax for said years may be assessed at any time within five years after the tax returns for the tax-



able years ended December 31, 1943 and 1944 were due to be filed, all in accordance with section 275(c) of the Internal Revenue Code. The respondent further shows that the petitioner filed no returns for the taxable years ended December 31, 1943 and 1944, as required by section 52(a) of the Internal Revenue Code until October 22, 1945. As a consequence, the respondent was not precluded from determining deficiencies until three years after such returns were filed under the provisions of section 275(a) of the Internal Revenue Code. Since the respondent and the petitioner agreed, under the provisions of section 276(b) of the Internal Revenue Code, to extensions to June 30, 1950, of the period of assessment, as shown in subparagraph (q) of paragraph 5 of this answer to amended petition, the notice of deficiency which forms the basis of this proceeding with respect to both taxable years was timely mailed on February 20, 1950.

Further answering, respondent affirmatively alleges as follows:

8. In the event that petitioner's excess profits credit for the years 1943, 1944 and/or 1945 is held to be larger than that allowed by the respondent in the deficiency notice and as a result thereof, under the provisions of the Internal Revenue Code, the amount of the deficiency or deficiencies in income tax for the years 1943, 1944 and/or 1945 will be more than that determined by respondent in the deficiency notice which forms the basis of this proceeding, then, in the alternative, with respect to such year or years, respondent avers that the amount of said deficiency or deficiencies in income tax for the years 1943, 1944 and/or 1945 should be increased by such amount or amounts.

Wherefore, it is prayed that the appeal be denied; and that the respondent's determination be in all respects approved, or, in the alternative, with respect to the years 1943, 1944 and/or 1945, that the Court determine an increased deficiency or deficiencies in income tax for the years 1943, 1944 and/or 1945 as heretofore alleged, claim for [fol. 25] which is hereby made pursuant to the provisions of section 272(e) of the Internal Revenue Code.

Charles W. Davis, Chief Counsel Bureau of Internal Revenue.

## Of Counsel:

Thos. F. Callahan, District Counsel,  
A. J. Friedman, Special Attorney, Bureau of Internal  
Revenue.

AJF:tej 9-16-52

BEFORE THE TAX COURT OF THE UNITED STATES

**Stipulation of Facts—Filed September 16, 1952**

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys that the following facts shall be taken as true and that the same will be considered as offered in evidence in this proceeding, provided, however, that this stipulation shall be without prejudice to the right of either party hereto to introduce other and further evidence not inconsistent with the facts herein stipulated to be true:

1. The petitioner, Automobile Club of Michigan, was incorporated under the laws of the State of Michigan on July 21, 1916. Its name was originally Detroit Automobile Club. It assumed its present name on July 24, 1930. Petitioner's principal office and place of business is at 139 Bagley Avenue, Detroit, Michigan. A true copy of petitioner's articles of association with amendments thereto is attached hereto and is marked Exhibit 1. The purposes and activities of petitioner are set forth in its by-laws, a true copy of which is attached hereto and is marked Exhibit 2.

Exhibit 2 consists of three parts as follows: Exhibit 2, by-laws effective January 19, 1940, with amendments dated January 28, 1941 and April 7, 1942; Exhibit 2(a), by-laws [fol. 26] as amended effective March 15, 1947; and Exhibit 2(b), by-laws as further amended, effective May 20, 1947.

2. The functions of petitioner are carried out by its officers and employees under the direction of a board of directors which is elected annually. The members of the board of directors serve without compensation.

3. During the early part of 1934, petitioner inquired of respondent as to whether it was exempt from payment of

capital stock tax imposed by Section 215 of the National Industrial Recovery Act. On May 16, 1934, respondent wrote a letter to petitioner in reference to the inquiry and stated that in order to determine whether petitioner was entitled to exemption from payment of the capital stock tax imposed by Section 215 of the National Industrial Recovery Act, he must first determine whether petitioner was entitled to exemption for Federal income taxation under the provisions of Section 103 of the Revenue Act of 1932. Accordingly, respondent requested petitioner to supply certain information concerning its operations. A true copy of the letter of May 16, 1934, is attached hereto and is marked Exhibit 3.

4. On May 24, 1934, petitioner wrote respondent a letter and enclosed therewith a balance sheet showing the assets and liabilities of petitioner as of April, 1934. A true copy of the letter of May 24, 1934, and the balance sheet as of April, 1934, are attached hereto and are marked Exhibit 4.

5. On June 11, 1934, respondent wrote a letter to petitioner, a true copy of which is attached hereto and is marked Exhibit 5.

6. On September 29, 1937, respondent sent petitioner a questionnaire and requested it to supply certain information concerning its claim for exemption under Section 101(9) of the Revenue of 1936. The petitioner filled in the questionnaire, signed it, and returned it to respondent with a letter dated October 27, 1937, together with a copy of its financial statement as of December 31, 1936. True copies of the documents referred to are attached hereto and marked Exhibit 6.

[fol. 27] 7. The respondent wrote a letter to the petitioner on July 5, 1938, a true copy of which is attached hereto and is marked Exhibit 7.

8. On May 12, 1945, respondent wrote a letter to petitioner wherein he stated that the Bureau of Internal Revenue was reconsidering the question of the exemption of automobile associations for Federal income taxation and requested petitioner to supply further information concerning its operations. A true copy of the letter of May 12, 1945 is attached hereto and is marked Exhibit A.

9. On June 11, 1945, petitioner wrote a letter to respondent in reply to its letter of May 12, 1945, and enclosed therein an Exemption Affidavit (Form 1025), signed June 2, 1945, together with a balance sheet of petitioner's condition as of December 31, 1944, and also a copy of petitioner's articles of incorporation and by-laws. True copies of the letter of June 11, 1945, the exemption affidavit and the balance sheet as of December 31, 1944, are attached hereto and are marked Exhibit 8.

10. On July 16, 1945, respondent wrote a letter to petitioner notifying it that the Bureau rulings contained in the letters of June 11, 1934 (Exhibit 5) and July 5, 1938 (Exhibit 7) were revoked and that the petitioner was required to file Federal tax returns for the taxable year 1943 and subsequent years. A true copy of the letter dated July 16, 1945, is attached hereto and marked Exhibit B.

11. On November 5, 1945, the law firm of Berry and Stevens, 1000 Penobscot Building, Detroit 26, Michigan, wrote a letter to respondent as follows:

[fol. 28] "Honorable Norman D. Cann  
Deputy Commissioner of Internal Revenue  
Washington, D. C.

In re: Automobile Club of Michigan  
Detroit, Michigan

Symbols:IT:P:T:1:FDF

Dear Sir:

This is to advise you that the Automobile Club of Michigan has filed the following returns with the Collector of Internal Revenue at Detroit:

1. 1943 capital stock tax return with which the tax of \$4,062.50 was paid.
2. 1944 capital stock tax return with which the tax of \$4,375.00 was paid.
3. 1945 capital stock tax return with which the tax of \$4,375.00 was paid.

The foregoing returns were filed and the taxes paid under protest.



4. Corporation income and declared value excess profits tax return for the calendar year 1943.

5. Corporation excess profits tax return for the calendar year 1943.

6. Corporation income and declared value excess profits tax return for the calendar year 1944.

7. Corporation excess profits tax return for the calendar year 1944.

The last mentioned returns were filed under protest and no tax was paid for the reason that we maintain that the Club is exempt from tax. The returns were filed in conformity with the request contained in your letter of July 16, 1945, directed to the Automobile Club of Michigan.

[fol. 29] It would be appreciated if all the returns might be subjected to an early examination by the Revenue Agent.

Very truly yours,

(signed) R. H. Berry

RHB:od

cc to Internal Revenue Agent in Charge  
Detroit, Michigan"

12. Attached hereto is a schedule of the balance sheets of petitioner showing its assets and liabilities as recorded on its books for each of the years ended December 31, 1934 through December 31, 1941, which schedule is marked Exhibit 9.

13. Attached hereto is a schedule of the balance sheets of petitioner showing its assets and liabilities as recorded on its books for each of the years ended December 31, 1942 through December 31, 1947, which schedule is marked Exhibit 10.

14. Attached hereto is a schedule of petitioner's profit and loss as recorded on its books for each of the years 1934 through 1941, which schedule is marked Exhibit 11.

15. Attached hereto is a schedule of petitioner's profit



and loss as recorded on its books for each of the years 1942 through 1947, which schedule is marked Exhibit 12.

\* 16. True copies of petitioner's Federal tax returns filed by petitioner are attached hereto and are marked as follows:

Exhibit 13. Corporation income and declared value excess profits tax return (Form 1120) for the taxable year 1943.

Exhibit 14. Corporation excess profits tax return (Form 1121) for the taxable year 1943.

Exhibit 15. Corporation income and declared excess profits tax return (Form 1120) for the taxable year 1944.

[fol. 30] Exhibit 16. Corporation excess profits tax return (Form 1121) for the taxable year 1944.

Exhibit 17. Corporation income and declared value excess profits tax return (Form 1120) for the taxable year 1945.

Exhibit 18. Corporation excess profits tax return (Form 1121) for the taxable year 1945.

Exhibit 19. Corporation income tax return (Form 1120) for the taxable year 1946.

Exhibit 20. Corporation income tax return (Form 1120) for the taxable year 1947.

17. On August 12, 1944, petitioner filed Form 990

(Treasury Department, Internal Revenue Service) in the office of the Collector of Internal Revenue at Detroit, Michigan, for the calendar year 1943, as required by Section 54 (f) of the Internal Revenue Code; and filed a like form on May 17, 1945, for the calendar year 1944. Photostat copies of the forms so filed are attached hereto and marked Exhibit 21.

18. The corporation income and excess profits tax returns filed by petitioner for the years in issue were prepared on the basis of a calendar year and on the accrual method of accounting.

19. The persons who avail themselves of the services offered by petitioner and who join petitioner's organization are designated as members. Such members are classi-

fied into three groups, viz, honorary members, life members and active members. During the years here involved, active members paid annual dues of \$10.00, except that such amount was increased to \$12.00 effective October 1, 1946. The number of members belonging to petitioner during the years in question was approximately as follows:

1943.....	212,865
1944.....	224,092
1945.....	243,630
1946.....	261,695
1947.....	244,994

[fols. 31-34] 20. Respondent has determined that petitioner's membership dues should be taken into income when received. In the event the respondent's determination in this regard is sustained, the correct amount of petitioner's income from membership dues is as follows:

1943.....	\$2,126,437.50
1944.....	2,237,017.04
1945.....	2,430,543.97
1946.....	2,744,897.65
1947.....	2,914,028.76

Petitioner's position is that it earned the membership dues ratably over the period of the membership, and that such dues should be taken into account upon a monthly basis over the period of such membership and not on the basis of when such dues were received. Petitioner's returns were prepared on this basis. In the event petitioner is sustained in this regard, the correct amount of petitioner's income from membership dues is as follows:

1943.....	\$1,993,695.13
1944.....	2,154,137.70
1945.....	2,353,345.16
1946.....	2,598,978.63
1947.....	2,849,504.94

21. In the event it is decided that petitioner is required to take membership dues into income when received, its income from advertising revenues would be reduced below

the amount reported in petitioner's income tax returns by the following amounts:

1943.....	\$267.25
1944.....	945.48
1945.....	330.00

[fol. 35]      Raymond H. Berry, Counsel for Petitioner,  
Charles W. Davis, Chief Counsel Bureau of Internal  
Revenue, Counsel for Respondent.

[fol. 36]      **Exhibit 1 to Stipulation of Facts**

Articles of Association  
of the  
"Detroit Automobile Club."

We, the undersigned, being of full age, and desiring to become incorporated under the provisions of Act. No. 171, of the Public Acts of Michigan for 1903, entitled "An act for the incorporation of associations not for pecuniary profit," do hereby make, execute and adopt the following articles of association, to wit:

Article I.

The name or title by which said corporation is to be known in law is the Detroit Automobile Club.

Article II.

The purpose or purposes for which it is formed are as follows: To promote and foster the healthy growth of the automobile industry; to secure the adoption and enforcement of reasonable and useful traffic ordinances and motor vehicle laws; to promote the establishment and construction of permanent highways for traffic; to interest automobile owners and drivers in the principles of "Safety First," as applied to automobile traffic; to promote touring and to obtain and furnish touring information and the necessary sign boarding of public highways; and to co-operate in any work or movement which may tend to benefit

the automobile driver, user, owner, or manufacturer, and the automobile industry in general.

### Article III.

The principal office or place of business shall be at Detroit, in the County of Wayne.

### Article IV.

The term of existence of this proposed corporation is fixed at thirty years from date of these articles.

[fol. 37]

### Article V.

The number of Trustees or Directors shall be fifteen.

### Article VI.

The names of the Trustees or Directors selected for the first year of its existence are as follows:

M. L. Pulcher, Edward N. Hines, E. P. Hammond, Edward Bleil, L. D. Robertson, Alfred O. Dunk, William E. Metzger, Alexander W. Copland, W. B. Bachman, Harry J. Porter, Wm. S. Bryant, Earl F. Jackson, William D. Rockwell, Bert Morley and M. C. DeWitt.

### Article VII.

The qualifications required of officers and members are as follows:

Any white male person over the age of twenty-one years, and of good moral character.

In Witness Whereof, we, the parties hereby associating, have hereunto subscribed our names this 21st day of July A. D. 1916.

#### Names

M. L. Pulcher  
E. P. Hammond  
L. D. Robertson  
William E. Metzger  
W. B. Bachman  
Wm. G. Bryant  
William D. Rockwell

#### Names

Edward N. Hines  
G. Edward Bleil  
Alfred O. Dunk  
Alexander W. Copland  
Harry J. Porter  
Earl F. Jackson  
Bert Morley

M. C. DeWitt.

State of Michigan,  
County of Wayne—ss.

On this 21st day of July A. D. 1916, before me, a Notary Public in and for said County, personally appeared Edward N. Hines, L. D. Robertson, Alfred O. [fol. 38] Dunk, William E. Metzger, Alexander W. Copland, W. B. Bachman, Harry J. Porter, William G. Bryant, Earl F. Jackson, known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

Delia Pichette, Notary. Public, Wayne County,  
Michigan.

My commission expires December 21, 1919.

State of Michigan,  
County of Wayne—ss.

On this 21st day of July A. D. 1916, before me, a Notary Public in and for said County, personally appeared E. P. Hammond, Edward Bleil, and M. C. DeWitt, known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

George H. Klein, Notary Public, Wayne County,  
Michigan.

My commission expires August 28, 1917.

State of Michigan,  
County of Wayne—ss.

On this 21st day of July A. D. 1916, before me, a Notary Public in and for said County, personally appeared M. L. Pulcher, William D. Rockwell, and Bert Morley, known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowl-



edged that they executed the same freely and for the intents and purposes therein mentioned.

Lillian F. Archer, Notary Public, Wayne County,  
Michigan.

My commission expires November 15, 1918.

Recorded July 26, 1916.  
(10 fol.) (S & C)

[fol. 39]      Certificate of Amendment  
                                 to the  
                                 Articles of Association  
                                 of  
                                 Detroit Automobile Club

(Postoffice Address 139 Bagley Ave.,  
Detroit, Michigan.)

We, the undersigned, being the President and the Secretary of the Detroit Automobile Club, a corporation existing under the provision of Act No. 84 of the Public Acts of 1921 and amendments thereto, do hereby certify as required by Section 9, Chapter 1, Part 2 of said Act that at a meeting of the membership of said corporation expressly called for the purpose of amending its Articles of Association and held at the office of said corporation on the 17th day of April, A. D. 1931, it was resolved by a majority vote of the members present at said meeting of said corporation that Article I of the Articles of Association be and the same is amended so as to read as follows, viz.:

“Article I. The name or title by which said corporation is to be known in law is ‘Automobile Club of Michigan.’ ”

In witness whereof we hereunto sign our names this 17th day of April, A. D. 1931.

Wm. G. Bryant,  
President.

W. A. Brush,  
Secretary.

Filed April 20, 1931.

[fol. 40]

Letter of Consent from  
Automobile Club of Michigan

Detroit Automobile Club,  
A Michigan Corporation,  
Detroit, Michigan.

The undersigned corporation, Automobile Club of Michigan hereby consents to your adoption and use of the name "Automobile Club of Michigan" as the corporate name of your company.

Automobile Club of Michigan,  
By Richard Harfst,  
President.

and Howard T. Browne  
Secretary.

Filed April 20, 1931.

(Non Profit Stock Corporation)

Articles of Incorporation Extending Corporate Term  
of  
Automobile Club of Michigan

These Articles of Incorporation are made, signed and acknowledged by the president and the secretary of Automobile Club of Michigan, a non-profit corporation organized under the laws of the State of Michigan, for the purpose of extending the corporate term of said corporation pursuant to the provisions of Section (60 or 61, as the case may be) of Act No. 327 of the Public Acts of Michigan of 1931, known as the Michigan General Corporation Act, as follows:

Article I

The name of this corporation is Automobile Club of Michigan.

Article II

The purpose or purposes of this corporation are as follows: To promote and foster the healthy growth of [fol. 41] the automobile industry; to secure the adoption and enforcement of reasonable and useful traffic ordinances

and motor vehicle laws; to promote the establishment and construction of permanent highways for traffic; to interest automobile owners and drivers in the principles of "Safety First," as applied to automobile traffic; to promote touring and to obtain and furnish touring information and the necessary sign-boarding of public highways; and to cooperate in any work or movement which may tend to benefit the automobile driver, user, owner, or manufacturer, and the automobile industry in general. In general, to carry on any business in connection therewith and incident thereto not forbidden by the laws of the State of Michigan and with all the powers conferred upon corporations by the laws of the State of Michigan.

### Article III

Location of the corporation is Detroit, in the County of Wayne, State of Michigan.

Postoffice address of registered office in Michigan is 139 Bagley Ave., Detroit 26, Michigan.

### Article IV

The total authorized capital stock is None.

(1) Preferred: None shs.; Common: None shs.; Par Value \$ (Membership only) and/or shs. of (2) Preferred: none; Common: None; without par value.

(3) The following is a description of each class of stock of the corporation with voting powers, preferences and rights and the qualifications, limitations or restrictions thereof:

The Automobile Club of Michigan is a non-profit corporation with a membership of approximately 245,000 who have delegated to the Board of Directors of fifteen all power and authority to carry on the business of the Corporation and to execute any and all contracts, agreements and documents necessary to carry on all the activities, services and business of the Corporation.

[fol. 42] This is covered by the By-Laws of the Club to which each and every member has subscribed.

The amount of paid-in capital of this corporation is \$ None.

## Article V

The members and directors and the number of members is as follows:

Names	Business Address Detroit, Michigan	Number of Shares		
		Common	Preferred	Non-Par
J. Lee Barrett	1005 Stroh Bldg.	None	None	None
John A. Brown	228 W. Congress	"	"	"
Wm. A. Brush	611 Stroh Bldg.	"	"	"
Wm. G. Bryant	2176 Nat'l. Bk. Bldg.	"	"	"
Chas. T. Bush	149 E. Larned St.	"	"	"
Roy M. Hood	703 Basso Bldg.	"	"	"
Henry S. Hulbert	660 Woodward Ave.	"	"	"
Dr. James W. Inches	D. A. C.	"	"	"
Ralph Thomas	164 E. Larned St.	"	"	"
Chas. B. Van Dusen	2727 Second Ave.	"	"	"
James Vernor	239 Woodward Ave.	"	"	"
Jesse G. Vincent	1580 E. Grand Blvd.	"	"	"
Edward J. Weeks	6400 E. Davison	"	"	"
Charles L. Wilson	5255 Tillman Ave.	"	"	"
Clarence E. Otter	3975 Cass Ave.	"	"	"

The above are also Directors. See Article VI below.  
They hold Power of Attorney and Proxy of all members.

## Article VI

The names and addresses of the board of directors are as follows:

Same as listed in Article V above.

## Article VII

The term of this corporation is fixed at 30 years from the 26th day of July, A. D. 1946.

[fol. 43]

## Article VIII

In Witness Whereof the said president and secretary of said corporation, pursuant to appropriate proceedings of the shareholders, a copy of which, certified by the secretary and verified by his oath is appended hereto, have made, signed and acknowledged these Articles of Incorporation this 22nd day of January, A. D. 1946.

(s) John A. Brown,  
President.

(s) Wm. A. Brush,  
Secretary.

State of Michigan,  
County of Wayne—ss.

On this 22nd day of January A. D., 1946, before me, a Notary Public in and for said County, personally appeared John A. Brown, President, and Wm. A. Brush, Secretary of Automobile Club of Michigan, the corporation mentioned in the foregoing instrument, to me known and known to me to be such officers of said corporation, and who executed the foregoing instrument and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

Cora M. Hagar, Notary Public, Wayne County, Michigan. My commission expires November 29, 1946.

(Note: The statute does not contemplate that articles extending corporate term shall be used as a vehicle for any amendment of the corporate structure except term of existence.)

### Certified Copy of Proceedings of Members Meeting

(To be appended to the new articles)

I, Wm. A. Brush, secretary of Automobile Club of Michigan, the corporation named in the foregoing Articles of Incorporation, do hereby certify that the following is a [fol. 44] true copy of the proceedings of a special meeting of the members of said corporation duly called for the express purpose of considering and taking action upon continuance of the corporate existence of said corporation for such further term as is permitted by law, and duly held on the 22nd day of January, A. D. 1946: John A. Brown, President, presided.

Roll call disclosed that, out of a total of 245,000 members outstanding, 245,000 members were present in person or by proxy.

The following resolution was introduced by William G. Bryant, seconded by Charles T. Bush:

Whereas, the corporate existence of this corporation is about to expire on the 26th day of July, 1946; and

Whereas, the members deem it desirable and beneficial



to them that the corporate term of this corporation be continued and extended;

Now, therefore, be it and it hereby is resolved, and the members do hereby consent and direct, that the corporate existence of Automobile Club of Michigan shall be extended and continued for a further term of 30 years from and after the date of expiration of the present term.

Upon vote by ballot upon the foregoing resolution 245,000 members voted, Aye, and no members voted. Nay.

The holders of more than two-thirds of the members, having voted in favor of said resolution, the chair declared the same duly adopted.

Upon motion, duly seconded, the meeting adjourned.

(s) Wm. A. Brush,  
Secretary.

Subscribed and sworn to before me this 22nd day of January, A. D. 1946.

Cora M. Hagar, Notary Public, Wayne County, Michigan. My commission expires November 29, 1946.

[fol. 45] (Note: The same form with appropriate changes in recitals to conform to the facts may be used for renewals voted after corporate existence has expired, in which case a four-fifths vote is required. See Sec. 61, also Constitution of 1908, Art. XII, Sec. 3.)

Form 5—12-11-35—9M

## **Exhibit 2 to Stipulation of Facts.**

### **BY-LAWS OF THE AUTOMOBILE CLUB OF MICHIGAN Effective January 1, 1940**

#### **Article I**

##### **Name**

As provided for in the certificate of incorporation, this organization shall be known as the Automobile Club of Michigan.

## Article II

### Club Seal

The corporate seal shall carry the words "Automobile Club of Michigan" thereon.

## Article III

### Objects

Section 1. The Automobile Club of Michigan shall be essentially a members' Club, supported by members' subscriptions and not carried on for profits. Its objects are fully set forth in paragraph two of the Articles of Incorporation, as follows:

"To promote and foster the healthy growth of the automobile industry; to secure the adoption and enforcement of reasonable and useful traffic ordinances and motor vehicle laws; to promote the establishment and construction of permanent highways for traffic; [fol. 46] to interest automobile owners and drivers in the principles of 'Safety First' as applied to automobile traffic; to promote touring and to obtain and furnish touring information and obtain the necessary sign-boarding of public highways; and to cooperate in any work or movement which may tend to benefit the automobile driver; user, owner or manufacturer, and the automobile industry in general."

## Article IV

### Directors

Section 1. The control and management of the Club shall be vested in a Board of fifteen (15) Directors. Any member of the Club in good standing shall be eligible to the office of Director.

Section 2. At the annual meeting of the Board of Directors held in December 1938, five (5) Directors shall be elected by said Board for a term of three (3) years to take the place of the four (4) Directors whose terms shall expire on December 31, 1938, and to add one extra Director to serve

for three (3) years; at the annual meeting of the Board of Directors held in December, 1939, five (5) Directors shall be elected by said Board for a term of three (3) years to take the place of the seven (7) Directors whose terms shall expire on December 31, 1939; and at its annual meeting held in December, 1940, five (5) Directors shall be elected by said Board for a term of three (3) years to take the place of the five (5) Directors whose terms shall expire December 31, 1940; and thereafter at each annual meeting, the said Board of Directors shall elect Directors to take the place of those whose terms expire on December 31 of that year. Said Directors to be elected for a term of three (3) years and to hold office as hereinbefore provided.

In case a vacancy occurs through death, resignation, removal by the Board for cause or other reason, same shall be filled as hereinafter provided.

[fol. 47] Section 3. The Board of Directors shall have general charge, management, and control of the affairs, funds and property of the organization.

The Board of Directors shall authorize all contracts, purchases and payments as it shall deem necessary and proper.

It shall control all the expenses and charges of the organization and authorize the employment of such assistants and clerks as it shall deem expedient, and receive and redress complaints, provided the same be properly made to it in writing.

It shall make such rules as to the use of the organization premises as it may find expedient, from time to time.

It may employ a manager for the Club and may delegate to him such of the duties in connection with the management and conduct of affairs of the organization as it may deem advisable. The Manager shall, at the expense of the Club, be placed under a bond as the Directors shall decide.

## Article V

### Officers and Their Duties

Section 1. The officers of the Club shall consist of a Board of Directors of fifteen (15) members, from and by whom a President, a First, a Second and a Third Vice President, a Treasurer and a Secretary who shall also be officers of the

Club, shall be elected at the annual meeting of the Directors.

Section 2. The President, or in his absence, one of the Vice-Presidents in the order of their election, shall preside at all the meetings, and if the President and the Vice-Presidents shall all be absent, a Chairman shall be chosen by vote.

The President, or in his absence, one of the Vice-Presidents, shall with the Treasurer sign all written contracts and obligations of the Club as authorized by the Board of Directors and shall perform such other duties as the Directors may assign to him.

Section 3. The Treasurer shall collect all dues, shall keep the accounts of the Club in books belonging to it. He shall make disbursements upon orders approved in writing by the President or the Manager, as approved by the Board of Directors. He shall render a statement of the accounts of the Club to the Board of Directors whenever requested to do so. His accounts shall be audited by a certified public accountant annually, or oftener as the Board of Directors may decide.

He shall also make investments of the surplus funds of the Club, but before doing so must first obtain the approval of those delegated that authority by the Board of Directors or a Committee appointed by them for that purpose.

He shall also be a member of the Finance and Auditing Committee at all times.

Section 4. The Secretary shall keep a record of all meetings of the Club, and proceedings of the Board of Directors. He shall conduct the correspondence of the Club and give notice of all meetings to the members of the Club, and to the members of the Board of Directors. He shall notify persons elected to membership of their election, keep a correct list of members, and notify the Treasurer of the names of all persons elected.

## Article VI

### Meetings and Order of Business

Section 1. The Annual Meeting of the Club shall be held on the second Tuesday of November each year, unless for some cause it shall be adjourned to a later date, and all meetings of the organization shall be held in the City of Detroit,

and special meetings may be called by the Board of Directors, when they so desire, and shall be called by the Board of Directors, upon written request of two hundred (200) [fol. 49] members in good standing. Notice of the time and place of holding such meeting, addressed to the last known place of residence or business of the member, shall be sent either (A) by mail to each member in good standing and enclosed in an envelope properly addressed, stamped and mailed to each member at least ten (10) days prior thereto; or, (B) by publishing such notice in the Motor News, or that publication which is the official organ of the Automobile Club of Michigan, and by mailing a copy of such Motor News or other official publication as above described, (in which said notice be published) to each member at least ten (10) days prior to the holding of such special meeting. Twenty-five (25) active members shall constitute a quorum. The order of business shall be:

- (a) Reading the minutes of preceding meetings.
- (b) Report of the President.
- (c) Report of the Treasurer.
- (d) Report of the Secretary.
- (e) Reports of the General Committees.
- (f) Other business regularly before the meeting.

Section 2. Regular meetings of the Board of Directors shall be held on Tuesday of each week, unless otherwise ordered. Eight Directors shall constitute a quorum at any regular or special meeting. The order of business, except when otherwise determined by a vote of those present shall be:

- (a) Reading of the minutes of the previous meeting.
- (b) Reports of the officers.
- (c) Reports of the Committees.
- (d) Unfinished business.
- (e) New business.

[fol. 50] The annual meeting of the Board of Directors shall be held on the first Tuesday in December of each year. The order of business shall be:

- (a) Reading of minutes of preceding annual meeting.
- (b) Report of the President.



- (c) Report of the Treasurer.
- (d) Report of the Secretary.
- (e) Report of Standing Committees.
- (f) Report of Special Committees.
- (g) Election of Directors.
- (h) Election of Officers.
- (i) Other business regularly before the meeting.

Special meetings of the Board of Directors may be called on any date by the President, and shall be held on a request in writing signed by at least five members of the Board. At such meetings only such matters should be considered as are contained in the call. Notice of Special Meetings shall be mailed to each member of the Board of Directors at least five days in advance thereof.

Section 3. Meetings of Committees may be called by the Board of Directors, the Chairman of the Committee, or on request in writing of any three members of such a committee. Notice in writing of said meeting, setting forth the purpose for which it is called, shall be mailed to each member of said committee at least five days prior thereto, and only the business specified in said call shall be acted upon at said meetings.

The President and Manager shall be ex-officio members of all committees.

[fol. 51]

## Article VII

### Vacancies

Section 1. If a vacancy shall occur in any office, it shall be filled by the Board of Directors by a majority vote of those present at any regular or special meeting of the Board held subsequent to the meeting at which said vacancy shall be announced or decided upon. Provided, that all members of the Board of Directors shall have been notified at least one week in advance of such meeting, that action for appointment to fill such a vacancy shall be taken. The officer so appointed shall hold office during the unexpired time of the officer to whose term he succeeds.

Section 2. A vacancy within the meaning of the preceding section shall be deemed to have occurred in the offices of

President, Vice-Presidents, Secretary, Treasurer, or members of the Board of Directors, by resignation properly presented to the Board of Directors and accepted by them by a majority vote of the Directors at any regular or special meeting, or whenever such officer or officers shall have been absent from three consecutive regular meetings of the Board of Directors, but not until such officer shall have been given at least seven days' notice in writing that the Board of Directors intend, at a meeting to be held at a definite date named, to determine whether they shall declare a vacancy in said office, and then only if the Directors shall declare by vote that said officer could not show good cause for his absence, it being always understood that the Board of Directors has the power to excuse such absentee.

Section 3. All resignations shall be acted upon by the Board of Directors at any regular or special meeting.

## Article VIII

### Committees

Section 1. Immediately after the election of officers by the Board of Directors, or as soon, thereafter as may be [fol. 52] expedient, the newly elected President shall, with the approval of the Board of Directors, appoint the following standing committees, each of said committees shall consist of three or more members, including a Chairman.

Finance & Auditing

Laws & Ordinances

Membership

Publicity

Roads & City Planning

Safety & Traffic

Signs & Road Posting

Touring Information

Branches

National Affairs and International Relations

Emergency Road Service

Club Publications

New Club Services

Taxations

Section 2. Whenever any member of a committee shall neglect or fail in the performance of his duties as such, it shall be the duty of the President, with the approval of the Board of Directors, to declare his position vacant and appoint another in his place.

Section 3. Additional committees may be appointed by the President from time to time as may seem desirable or expedient, subject to the approval of the Board of Directors. Such special committee shall perform only the duties imposed upon them at the time of their appointment.

## Article IX

### Duties of Committees

Section 1. It shall be the duty of the Finance and Auditing Committee between November 1st and December 31st of each year to prepare a budget for the use and guidance of the officers and directors of the Club in handling its [fol. 53] activities, finances, etc., during the following year, which budget shall be presented for the approval of the Board of Directors at the first regular or special meeting of the Board after the first day of January of each year.

They shall also have charge and supervision of the annual audit and all special audits of the Club's books and the records of the several officers, chairmen of Committees, and employees; and a report of such audit as prepared by an expert accountant or auditor, shall be delivered to the Chairman of the Committee and by him presented to the Board of Directors for their approval as soon after the 1st of January in each year as convenient.

Section 2. It shall be the duty of the Committee on Laws and Ordinances to inquire into and inform the Board of Directors as far as possible, as to all laws and ordinances, whether proposed or actually in force in the State of Michigan, City of Detroit, or elsewhere affecting the owners and users of automobiles. It shall urge the passage of proper laws and ordinances under the direction of the Board of Directors, and originate and propose such laws and ordinances as may help in safeguarding the interests of members of be of benefit to the public.

Section 3. It shall be the duty of the Membership Com-

mittee to suggest and carry on plans, when approved by the Board of Directors, looking to an increase in membership and to secure the yearly renewal of members. It shall cooperate with the Board and management to bring about and maintain the largest possible membership. It shall pass on all applications for membership and may make such investigation as to the character and standing of a proposed applicant as it deems necessary or desirable, and further act in accordance with Section 3 of Article X.

Section 4. It shall be the duty of the Publicity Committee to handle the publicity of the Club and to see that all of its activities are presented in proper form to the press.

[fol. 54] Section 5. It shall be the duty of the Committee on Roads and City Planning to cooperate with the local, state and national officials having charge or direction of city planning, road, street, alley, drain and bridge problems, and to suggest changes in laws or methods as will best promote the broadest use of our transportation facilities; and to perform such other duties in connection with city planning, road improvement and maintenance as may be referred to it by the Board of Directors of the Club.

Section 6. It shall be the duty of the Safety and Traffic Committee to take an active part in the "Safety First" movement, both local and national; and to investigate and report to the Board of Directors of the Club on such needed laws, rules and regulations as will aid in safeguarding of lives and property.

Section 7. It shall be the duty of the Signs and Road Posting Committee to take up, from a practical business standpoint, questions concerning systems of working and sign-boarding the streets of Detroit, and the roads of Wayne County and the State of Michigan, and to investigate and recommend such activities and laws to the Board of Directors as will best serve the safety and convenience of motorists.

Section 8. It shall be the duty of the Committee on Touring Information to supervise and assist the Touring Bureau of the Club in securing and disseminating reliable touring information and data.

Section 9. It shall be the duty of the Committee on Branches, of which Committee the Manager of the Auto-



mobile Club of Michigan may be the Chairman to suggest, supervise and carry on the establishment of Branches of this organization in such cities in Michigan as it shall deem wise; it shall recommend in writing the establishment of such branches as it considers advisable to the Board of Directors, who may authorize the establishment and maintenance of such Branches by two-thirds vote of all Directors. [fol. 55] Section 10. It shall be the duty of the Committee on National Affairs and International Relations to look after all relations of the Club with National Headquarters of the American Automobile Association, National legislation, and International contacts with legislation and foreign Clubs.

Section 11. It shall be the duty of the Committee on Emergency Road Service to supervise, assist and counsel the management of the Club in an effort to economically furnish the membership with the most efficient and satisfactory Emergency Road Service possible.

Section 12. It shall be the duty of the Committee on Club publications to consider and pass upon all matters involving the publication, issue and distribution of the Club paper or magazine to the end that the most satisfactory contact between Club headquarters and the membership is secured.

## Article X

### Membership

Section 1. The Honorary Membership shall be limited to twenty-five and may include ex-officio, the following: The President of the United States, the Governor of Michigan, and the Mayor of the City of Detroit. The Board of Directors by unanimous consent may elect as Honorary members any persons distinguished for their political, scientific, literary, industrial or administrative capacities. Honorary members shall be exempt from all fees, dues or subscriptions, but shall have no right to vote at any meeting of the Club, nor any right, title or interest in its property or assets.

Section 2. Life membership is secured by an active member commuting all his subsequent annual dues and future assessments by the payment at one time of two hundred and fifty dollars (\$250.00) upon making which



payment he shall become a life member of the Club and be exempt from the payment of all future dues and assessments. A life member shall continue to have all the rights [fol. 56] of an active member, it being understood that this organization has no power to extend life memberships in its national affiliations.

**Section 3.** Any person, male or female, of good moral character, over sixteen years of age is eligible to active membership in the Club: provided, however, that when any application is filed by a person other than a white person, it shall be referred through the Chairman of the Membership Committee and the Manager of the Club directly to the Board of Directors, who shall have authority to receive or reject the application. Application for membership must be made in writing on a special blank, provided for that purpose. The application must state the name, address and occupation of the person proposed, and be endorsed by a member of the Club. The membership committee of the Club may make such investigations as to character and standing of the proposed applicant as it deems necessary or desirable, and if in their judgment no objection exists may declare the applicant elected to membership. If any objection is raised in the membership committee, the application shall be reported at the next regular or special meeting to the Board of Directors who shall take a vote by ballot. Two negative votes in the Board of Directors shall prevent the election of the applicant.

**Section 4.** No person shall have the benefits of the organization until he shall have paid to the Treasurer the fees and dues hereinafter prescribed.

**Section 5.** Any member who is in good standing, not in arrears or indebted to the Club, against whom no charges are pending, may resign his membership by delivering a notice thereof to the Secretary, who shall report the same at the next meeting of the Board of Directors, and upon resigning, such a member shall forfeit all his rights and interests in the Club property and assets.

**Section 6.** Every application for membership shall be in such form as the Board of Directors may from time to time approve.

[fol. 57]

## Article XI

### Entrance Fees and Dues

Section 1. There shall be no entrance fees. The dues shall be as follows: For active membership, annual dues amounting to ten dollars (\$10.00); which must accompany application.

Upon payment of the first annual dues, each member shall be provided with, free of charge, one radiator emblem upon the condition that *that* he shall return same upon ceasing to be a member of the Club.

Annual dues shall be due and payable on the first day of the month in each year, corresponding to the month in which the member was originally admitted to membership, at which date notices shall be sent by mail by the Club Treasurer. Applicants becoming members after the fifteenth of the month shall have a membership card dated the first of the month in which said application is filed.

Section 2. Any member whose annual dues remain unpaid for thirty days after receiving notice from the Club Treasurer that they are due, shall stand suspended from all privileges of the Club. He then shall be notified by the Treasurer of his suspension, and if shall fail to pay such dues within thirty days after such notification of suspension, he shall cease to be a member of the Club; but he shall not thereby be released from the payment of said dues, and shall be held for the payment of two months' dues and the expense of collecting the same.

## Article XII

### Discipline

Section 1. Any member may be admonished, suspended or expelled by the Board of Directors for conduct injurious to the welfare or character of the organization, or for the willful or reckless disregard of the existing laws or ordinances [fol. 58] of the State or municipal divisions thereof; provided that before any such action shall be taken, the member against whom complaint has been made shall be given ten days' notice in writing of the charge against him, and have an opportunity to make a defense before the Board of Directors.

## Article XIII

### Notices

Section 1. All notices required to be sent to each member shall be sent by mail to each member's residence or place of business (either in the form of special notice or as published in the Motor News) as the same may appear on the Secretary's books and such mailing shall be deemed presumptive evidence of the services of such notices.

## Article XIV

### Amendments

Section 1. The Board of Directors shall have power to make, amend or repeal the by-laws of this organization by a vote of two-thirds of all the Directors, at any regular or special meeting of the Board, provided that notice of intention to make, amend, or repeal the by-laws, in whole or in part, shall have been given to each Director at least ten (10) days prior to the meeting; or without any such notice, by a vote of all fifteen members of the Board of Directors.  
Correct to

January 1, 1940

[fol. 59] Amendments to By-Laws of Automobile  
Club of Michigan for the Period

January 1, 1940, to March 15, 1947

January 28, 1941.

Add Section 2 to Article III, to read:

This corporation shall use its funds only to accomplish the objects and purposes specified in Section 1 of this Article. And no part of said funds shall inure, or be distributed, to the members of this corporation. On dissolution, the funds of the corporation shall be distributed to one or more regularly organized, non-profit organizations devoted to one or more of the objects and purposes of this corporation, or to one or more regularly organized educational or

charitable organizations to be selected by the Board of Directors.

April 7, 1942.

Add paragraph 3 to Article IX, Section 1, to read:

They shall prepare for the Annual Meeting of the Board of Directors or at any other time directed by the Board, or as the Committee may deem necessary, a schedule of the holdings in securities (and cash available for investment), held by the Club together with their recommendations for the sale and/or transfer thereof, and for the purchase of additional securities. Such purchases, sales, and transfers as are authorized and approved by the Board of Directors shall be made by the Treasurer. If, however, it should come to the attention of the Treasurer and/or the Finance Committee that because of market conditions certain sales, transfers or purchases of securities are advisable prior to a meeting of the Board of Directors such transactions may be made by the Treasurer upon the written authority and approval of a majority of the Directors.

[fol. 60] April 7, 1942.

Change Section 3 of Article V to read:

The Treasurer shall have custody of the funds of the Club, collect all dues and accounts receivable, and shall keep the accounts of the Club in the books belonging to it. He shall make disbursements only upon orders authorized and approved by the Board of Directors except in case the disbursement shall be in an amount not in excess of Five Hundred Dollars (\$500.00), in which case approval by the President or General Manager of the Club shall be sufficient. He shall render a statement of the accounts of the Club to the Board of Directors at least once in each year and at such other times as the Board may require him to do so. His accounts shall be audited by a Certified Public Accountant annually, or oftener as the Board of Directors may decide.

He shall have the authority to invest and reinvest all the surplus funds of the Club which are on deposit in the "INVESTMENT ACCOUNT," but before making any invest-

ments he shall first obtain the authority and approval of the Board of Directors.

As such Treasurer, he shall also be a member of the Finance and Auditing Committee.

February 15, 1944.

Add at end of Section 1, Article III the words "PUBLIC RELATIONS."

[fol. 61] **Exhibit 3 to Stipulation of Facts**

May 16, 1934

IT:E:RR  
CQ

Automobile Club of Michigan  
139 Bagley Avenue  
Detroit, Michigan

Sirs:

Reference is made to your claim for exemption from payment of the capital stock tax imposed by section 215 of the National Industrial Recovery Act.

In order to determine whether you are entitled to such exemption, the Bureau must first determine whether you are entitled to exemption from Federal income taxation under the provisions of section 103 of the Revenue Act of 1932. You are, therefore, requested to furnish the following information in the form of an affidavit sworn to by one of your principal officers:

1. Date of incorporation, if you have been incorporated, or if not, the date of organization.
2. Detailed explanation of your actual activities.
3. Sources from which your income is derived:
  - (a) From members.
  - (b) From nonmembers.
  - (c) From all other sources.
4. The disposition made of such income.
5. Whether you pay interest or dividends on capital stock, if any, and, if so, the rate paid.



6. Whether any income is credited to surplus or may inure to the benefit of any private shareholder or individual. [fol. 62] 7. All other facts relating to your activities which may affect your status.

Your affidavit should be accompanied with copies of your articles of incorporation and by-laws, and a financial statement for the year 1933 showing assets and liabilities and a classified list of receipts and disbursements.

The information indicated above should be furnished at the earliest practicable date. In your reply reference should be made to IT:E:RR-CQ.

Respectfully,

Chas. T. Russell,  
Deputy Commissioner,

By

Chief of Section.

CQ/VC-1

**Exhibit 4 to Stipulation of Facts**

**AUTOMOBILE CLUB OF MICHIGAN**

Telephone Cherry 2911

139 Bagley Avenue

Detroit, Michigan

May 24, 1934

Commissioner of Internal Revenue,  
Treasury Department,  
Washington, D. C.

Re: IT: E: RR

CQ

Attention Mr. Chas. T. Russell

Dear Sir:

Answering your letter of May 16th referring to exemption from payment of capital stock imposed by section 215 of the National Industrial Recovery Act.

[fol. 63] (1) Date of incorporation of Detroit Automobile Club, July 21, 1916: name changed to Automobile Club of Michigan, July 24, 1930.

(2) Dues of the Automobile Club of Michigan are \$10.00 per year to all members without exception. No entrance or initiation fee. Club's activities are composed of touring service, such as logs, road maps, general touring information to members; emergency road service such as starting of members' disabled cars on the road, towing cars to official club garages, changing tires, etc.; the Michigan Motor News, a monthly magazine published by the Club for members only; and we are also interested in safety activities and several men are employed by the Club for work in the public schools as well as work in cooperation with the various cities of the state to promote safety and improve traffic conditions. We cooperate in any work or improvement which may tend to benefit the automobile driver, user, owner, or manufacturer, and the automobile industry in general.

(3) Our source of income is from membership dues, the sale of advertising in Michigan Motor News, and interests on funds invested. (See financial statement attached.)

(4) See financial statement attached showing detailed account of expense and income.

(5) We do not pay interest or dividends on capital stock—in fact the Club has no capital stock. Dues of all members is the same—\$10.00 per year.

(6) The attached financial statement will show the disposition of any excess of income over disbursements, and as above stated no income is credited to the benefit of any preferred shareholder or individual.

(7) The Automobile Club of Michigan is strictly a non-profit organization. No director has ever received remuneration of any kind for his services. It is not only a service [fol. 64] corporation for its members, but a civic corporation as well, and has always been so considered.

Very truly yours, "

J. C. Sasser  
Assistant Treasurer

State of Michigan,  
County of Wayne—ss.

Before me, a Notary Public in and for the County of Wayne, State of Michigan, appeared J. C. Sasser, who states that the above statement is true and correct, and

that he is the Assistant Treasurer of the Automobile Club, of Michigan.

Allan G. Dingwall, Notary Public, Wayne Co. Michigan. My commission expires Oct. 14, 1936.

[fol. 65]

BALANCE SHEET  
AUTOMOBILE CLUB OF MICHIGAN  
APRIL 1934

ASSETS

CURRENT ASSETS:

Cash in offices .....	1,240.00	
Cash on hand and in banks—		
National Bank of Detroit .....	82,298.64	
Detroit Savings Bank .....	7,175.01	
Mfgs. National Bank .....	79,052.91	
Certificates of Deposit .....	8,072.04	
Bonds .....	194,229.72	
Accts. Rec. M.M.Ns. ... 2,344.30		
Less reserve for bad debts .....	457.93	1,886.37
Accts. Rec. D.A.I.I. ....	1,635.71	
Accts. Rec. Misc. ....	13,389.15	

Total Current Assets ..... 388,979.55

OTHER ASSETS:

Deposits in closed bank & trust companies ..... 46,270.10

PROPERTY ACCOUNT:

Furniture & Fixtures—Detroit .....	43,725.44	
Divisions .....	23,063.91	
Automobiles .....	3,421.99	
	70,211.34	
Less reserve for depreciation ....	39,732.36	30,478.98

UNAMORTIZED PORTION OF LEASE—

HOLD IMPR. .... 46,014.85

DEFERRED CHARGES:

Inventories .....	10,116.84	
Miscellaneous .....	15,656.93	25,773.77

TOTAL ASSETS ..... 537,517.25

[fol. 66]

LIABILITIES

ACCOUNTS PAYABLE:

Detroit Purchase Expense .....	24,243.91	
Miscellaneous .....	5,250.54	
Investment fluctuation & general contingency fund .....	50,000.00	

Total Current Liabilities ..... 79,494.45

DEFERRED INCOME ..... 196,846.13

OPERATING FUND: 271,349.34

INCOME IN EXCESS OF EXP.  
FOR 4 MTHS. PERIOD END-  
ING APRIL 30, 1934. .... (10,172.67) 261,176.67

TOTAL LIABILITIES & RESERVES ..... 537,517.25

**Exhibit 5 to Stipulation of Facts**

June 11, 1934.

IT:E:RR

CQ

Automobile Club of Michigan,  
139 Bagley Avenue,  
Detroit, Michigan.

Sirs:

Reference is made to the evidence submitted by you in support of your claim to exemption from Federal income taxation.

The evidence submitted discloses that the Detroit Automobile Club was incorporated under the laws of the State of Michigan in 1916 and that the name of the organization was changed to the Automobile Club of Michigan in 1931. You were formed "to promote and foster the healthy growth of the automobile industry; to secure the adoption and endorsement of reasonable and useful traffic ordinances and motor vehicle laws; to promote the establishment and construction of permanent highways for [fol. 67] traffic; to interest au-omobile owners and drivers in the principles of 'Safety First' as applied to automobile traffic; to promote touring and to obtain and furnish touring information and the necessary sign boarding of public highways; and to co-operate in any work or movement which may tend to benefit the automobile driver, user, owner or manufacturer, and the automobile industry in general."

Your assistant treasurer in an affidavit states that your activities consist of a touring service, such as logs, road maps, general touring information to members; emergency road service such as starting of members' disabled cars on the road, towing cars to official club garages, changing tires, etc.; the publication of the Michigan Motor News, a monthly magazine published for your members only; and the employment of several men to work in public schools in cooperation with various cities of the state to promote safety and to improve traffic conditions. It is stated that you cooperate in any work or improvement or manufacturer, and the automobile industry in general;

which tends to benefit the automobile driver, user, owner, that your income is derived from membership dues, sale of advertising in your publication, and interest on funds; that you do not pay interest or dividends; and that you have no capital stock. Your financial statement discloses that your income is used to defray executive, legal, touring, emergency road service, safety and traffic signs, and miscellaneous operating expenses.

Based on the foregoing, it is held that you are entitled to exemption under the provisions of section 103(9) of the Revenue Act of 1932 and the corresponding sections of prior revenue acts. You are not, therefore, required to file returns for 1933 and prior years and it follows that future returns, under the provisions of section 101(9) of the Revenue Act of 1934, will not be required so long as there is no change in your organization, your purposes or methods of doing business.

[fol. 68] Any changes in your form of organization or method of operation, as shown by the evidence submitted, must be immediately reported by you to the collector of internal revenue for your district, in order that the effect of such changes upon your present exempt status may be determined.

The exemption granted in this letter does not apply to taxes levied under other titles or provisions of the respective revenue acts, except in so far as exemption is granted expressly under those provisions to organizations enumerated in section 103 of the Revenue Act of 1932.

A copy of this letter is being transmitted to the collector of internal revenue for your district.

By direction of the Commissioner.

Respectfully,

(Signed) Chas. T. Russell.  
Deputy Commissioner.

CQ/OEL-1



[fol. 69] **Exhibit 6 to Stipulation of Facts**  
(16)

**TREASURY DEPARTMENT**  
**Internal Revenue Service**  
Sept., 1937

September 29, 1937

**QUESTIONNAIRE**  
**FOR CLUBS ORGANIZED AND OPERATED EX-**  
**CLUSIVELY FOR PLEASURE, IT:RR REC-**  
**REATION, AND OTHER NONPROFIT-**  
**ABLE PURPOSES, ETC.**

Claiming Exemption Under Section 101(9) of the Revenue Act of 1936

Automobile Club of Michigan,  
139 Bagley Avenue,  
Detroit, Michigan.

If the name and address at the left hereof is not the present name and address please indicate present name and address in appropriate space in affidavit below.

State of Michigan,  
County of Wayne—ss.

Albert R. Thomson deposes and says that he is the Treasurer of the Automobile Club of Michigan, located at 139 Bagley Ave., Detroit, Michigan, and that the following answers and statements and attached financial statements showing the assets and liabilities of the organization and a classified list of the receipts and disbursements during the accounting period indicated are true to the best of his knowledge and belief:

1. Have your articles of incorporation or association or by-laws been changed or amended since copies thereof were last submitted to the Bureau? Yes—See certified copy of minutes of 6/15/37 attached.

If so, submit copies of such changes or amendments.  
[fol. 70] 2. Have you disposed of any of your real prop-

erty since you were held to be exempt? No. If so, the year or years in which sold, the cost of the property, selling price and the terms of sale should be clearly stated.....

3. Have you ~~rented~~ any of your property since you were held to be exempt? No. If so, the year or years in which rented, the purposes for which rented and the amount received should be shown.....

4. Since you were held to be exempt, has your club been supported entirely by membership fees, dues and assessments? Yes.

If not state full particulars.....

5. Attach financial statements showing the assets and liabilities of the organization as at the close of the latest accounting period (ended Jan. 1, 1937) and a classified list of the receipts and disbursements during the same accounting period.

Albert R. Thomson (Signature of a principal officer)  
Treasurer.

Subscribed and sworn to before me this 26th day of October, 1937.

Allan G. Dingwall (Signature of officer administering oath) Notary Public, Wayne Co., Mich. My Com. Exp. Oct. 1, 1940.

Attach:

Financial statements.

[fol. 71]

Automobile Club of Michigan  
Telephone Cherry 2911  
139 Bagley Avenue  
Detroit, Michigan

October 27, 1937

Mr. Chas. T. Russell, Deputy,  
Commissioner of Internal Revenue,  
Treasury Department,  
Washington, D. C.

File—IT:RR

Dear Mr. Russell:

Replying to your letter of September 29th with which you enclosed questionnaire for clubs organized and oper-

ated exclusively for pleasure, recreation, and other non-profitable purposes, etc.—we enclose herewith the questionnaire completely filled out and signed by our Treasurer, Albert R. Thomson. We also enclose a copy of our financial statement as of January 1, 1937—together with certified copy of minutes of our Board of Directors showing change in our by-laws since copies were last submitted to the Bureau.

In this connection, our Grand Rapids office has forwarded to us your letter of October 13th addressed to the Grand Rapids Automobile Club, Grand Rapids, Michigan. While there is no organization known as the Grand Rapids Automobile Club, we feel quite sure that the questionnaire enclosed with your letter was intended for our Grand Rapids office. We wish to explain that we have offices in twenty-six Michigan towns outside of the City of Detroit. All income and expense at those offices clears thru the main office in Detroit. In other words, they are not separate automobile clubs but all a part of the Automobile Club of Michigan which is one concern. We have in-[fol. 72] structed our various branch offices to forward to us any such questionnaires which they might receive from the Treasury Department.

Very truly yours,

J. C. Sasser  
Assistant Treasurer

EW

[fol. 73]

**Financial Statement  
Automobile Club of Michigan**

**December—1936**

Ex. B (1)

**Income & Expenses  
December, 1936**

**Cash Income**

	Dec. 1936	Nov. 1936	Dec. 1935
Detroit Memberships—New	17,297.83	14,610.84	8,154.84
Renews	18,746.36	16,147.84	13,592.99
Sales, Maps & Guides	22.95	35.75	39.80
Interest Earned	1,288.73	1,444.40	17.34
Misc. Income	36.44	58.38	561.12
<b>Total Income—Detroit</b>	<b>37,392.31</b>	<b>32,197.21</b>	<b>21,943.85</b>
Motor News	9,391.61	12,720.66	6,754.56
Divisions	31,528.54	25,159.49	19,587.02
<b>Total Income—All Sources</b>	<b>78,312.46</b>	<b>70,077.36</b>	<b>48,285.43</b>

**Cash Expenses**

<b>Executive:</b>			
Salaries	2,350.00	2,612.50	2,725.00
Printing & Stationery	90.51	17.73	4.01
Telephone & Telegraph	35.11	64.13	34.66
Traveling	61.75	3.80	254.94
Auto Expenses	4.93	47.83	100.45
Dues & Memberships		10.00	
Director's Meetings	33.30	55.97	21.18
Entertainment	62.89	77.00	
Miscellaneous	67.54	94.01	11.14
	<b>2,706.03</b>	<b>2,982.97</b>	<b>3,151.38</b>
<b>Legal:</b>			
Salaries	785.00	797.50	640.00
Printing & Stationery			25.85
Telephone & Telegraph	47.32	48.94	39.69
Traveling	57.71	21.75	43.35
Court Costs	3.85	6.20	
Miscellaneous	40.00		7.88
Rent	175.00	175.00	
	<b>1,108.88</b>	<b>1,049.39</b>	<b>756.75</b>

[fol. 74]

<b>Touring:</b>			
Salaries	2,560.00	2,470.00	2,230.00
Printing & Stationery	241.66	94.38	290.05
Telephone & Telegraph	133.55	61.62	35.56
Traveling	22.54	236.88	
Auto Expense	42.12	252.58	29.10
Maps & Guides	147.80	1,101.88	109.98
License Expense	23.85	7.82	9.92
Drafting	13.47	9.42	
Miscellaneous	18.15	7.75	25.76
	<b>3,203.14</b>	<b>4,242.33</b>	<b>2,510.40</b>

Ex. B (2)

**Emergency Road Service:**

Salaries.....	1,925.00	1,925.00	1,630.00
Printing & Stationery.....	179.29	329.36	3.65
Telephone & Telegraph.....	113.56	111.29	95.26
Traveling.....		7.00	
Auto Allowance.....	114.65	146.42	155.36
Garage Service.....	6,210.07	5,121.88	5,143.28
Miscellaneous.....	1.03		
	8,643.60	7,640.95	7,020.25

**Safety & Traffic:**

Salaries.....	996.81	926.16	735.00
Printing & Stationery.....	676.90	273.11	317.21
Telephone & Telegraph.....	11.26	11.24	10.52
Traveling.....	399.69	377.77	217.77
Ponchos Hats Armbands, Prizes, Exp. chg.....	1,012.51	665.78	5.67
Rent.....			31.12
Dinners & Banquets.....	64.44	103.71	114.45
Miscellaneous.....	.75	21.79	24.82
Postage.....	114.74	130.39	140.09
	3,277.10	2,509.95	1,596.65

**Signs:**

Salaries.....	175.00	175.00	175.00
Street & Road Signs.....	40.73	384.89	115.97
	134.27	569.89	290.97

**Membership Selling:**

Salaries.....	210.00	207.50	165.00
Printing & Stationery.....	361.67	655.91	598.57
Telephone & Telegraph.....	615.98	605.95	516.74
Commissions.....	5,237.50	4,029.00	2,329.00
New Car Reports.....	45.50	45.50	41.50
Welcome Service New Members.....	6.00	26.00	
Miscellaneous.....			11.75
	6,476.65	5,569.86	3,662.56

[fol. 75]

**Accounting:**

Salaries.....	2,447.30	2,477.85	2,274.44
Printing & Stationery.....	334.46	110.23	402.21
Telephone & Telegraph.....	18.93	18.55	15.88
Auditing.....	100.00	100.00	110.00
Addressograph Rep.....	84.27	202.92	65.57
Miscellaneous.....	6.45		35
	2,991.41	2,909.55	2,868.45

**General:**

Salaries.....	395.00	381.00	370.00
Printing & Stationery.....	849.26	466.78	207.66
Federal Tax on Payroll.....	59.54	263.56	
Insurance.....	355.41	358.21	198.27
Emblems.....	159.00	897.21	365.14
A. A. A. Dues.....	1,892.75	1,519.50	1,147.25
Miscellaneous.....	213.43	122.96	26.72
Entertaining.....	672.33	10.50	367.68
Gifts & Donations.....	228.39		600.58



## General (Continued)

Ex. B (3)

Prizes for suggestions.....	15.00		
Dept. Head Meetings.....	26.88		30.31
Postage & Mail Expense.....	1,320.83	1,218.38	781.54
Depreciation.....	436.97	410.51	525.06
Legal Expense.....			35.00
House Organ.....	17.00	15.30	
Grosse Pointe office expense.....	459.76	484.51	81.55
Trust Account Service.....		187.50	
	<u>6,783.55</u>	<u>6,336.12</u>	<u>4,736.76</u>

## Special Representative:

Salaries.....	110.00	110.00	100.00
Expenses.....	14.25	12.12	11.23
	<u>124.25</u>	<u>122.12</u>	<u>111.23</u>

## Special Appropriations:

Shows.....		747.29	
Publicity.....	377.70	398.69	298.39
Sound Car Expense.....	92.56	147.08	158.92
A. A. A. Entertainment.....	751.58	2,372.94	
Advertising.....	59.50	77.12	174.61
Radio Broadcast.....	1,137.50	1,137.50	2,187.50
Highway Survey Expense.....			669.68
	<u>2,419.14</u>	<u>4,880.62</u>	<u>3,489.08</u>

[fol. 76]

## Accident Insurance Policies:

Salary.....	382.70	307.70	211.90
Printing & Stationery.....	2.69	5.47	40.55
Policy Premiums.....	2,264.56	1,585.98	686.42
	<u>2,649.95</u>	<u>1,899.15</u>	<u>938.87</u>

## Building:

Salaries.....	942.65	874.96	706.21
Janitor Supplies.....	337.34	466.24	212.81
Heat.....	339.63	251.23	265.42
Elec. Current on Building.....	325.20	587.34	256.09
Elec. Current on Signs.....	42.00	42.00	102.00
Taxes.....	520.56	517.54	527.45
General Repairs.....	376.69	1,082.69	104.02
Rent.....	2,750.00	2,750.00	3,166.66
Insurance.....	74.04	72.41	58.63
Water Tax.....		31.75	
Amortization of Leasehold Imp.....	1,631.95	1,631.92	1,631.92
	<u>7,340.06</u>	<u>8,308.08</u>	<u>7,031.21</u>

Less amt. charged to D. A. I. I.....

	<u>4,382.00</u>	<u>4,382.00</u>	<u>4,382.00</u>
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## Detroit Expenses

	<u>2,958.06</u>	<u>3,926.08</u>	<u>2,649.21</u>
Less general overhead chg. to Divisions.....	43,376.03	44,628.98	33,782.56
	<u>5,601.96</u>	<u>5,267.40</u>	<u>2,502.64</u>

## Total Expense—Detroit

	<u>37,774.07</u>	<u>39,361.58</u>	<u>31,279.92</u>
Motor News.....	7,966.29	14,648.31	6,767.35
Divisions.....	19,973.24	26,018.80	10,541.15

## Total Expenses—All Sources

	<u>65,713.60</u>	<u>80,028.69</u>	<u>48,628.42</u>
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## Net Income or Deficit

	<u>12,598.86</u>	<u>9,951.33</u>	<u>242.99</u>
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[fol. 77]

Income and Expenses  
Divisions

Ex. C (1)

December, 1936

		Dec. 1936	Nov. 1936	Dec. 1935
ADRIAN	Income Expenses	1,227.00	882.00	759.25
		935.00	1,030.31	729.35
		292.00	148.31	29.90
ALBION	Income Expenses	211.00	152.84	81.00
		265.78	216.52	308.38
		54.78	63.68	227.38
ANN ARBOR	Income Expenses	1,364.00	1,201.00	1,110.72
		1,309.24	1,478.74	1,257.30
		54.76	277.74	146.58
BATTLE CREEK	Income Expenses	1,565.00	1,385.74	1,118.73
		1,411.03	1,608.03	1,183.61
		153.97	222.29	64.88
BENTON HARBOR	Income Expenses	675.91	615.74	664.11
		460.67	585.96	447.48
		215.24	29.78	216.73
COLDWATER	Income Expenses	441.00	270.00	261.00
		586.61	420.81	303.76
		145.61	150.81	42.76
DEARBORN	Income Expenses	1,145.21	1,076.70	726.00
		722.46	715.38	572.24
		422.75	361.32	163.76
GRAND RAPIDS	Income Expenses	2,560.35	2,169.25	1,799.25
		2,242.85	1,995.16	1,397.87
		317.50	114.09	401.38
JACKSON	Income Expenses	1,190.50	1,133.00	921.50
		997.06	1,218.94	921.90
		193.44	85.94	40
KALAMAZOO	Income Expenses	1,462.99	1,413.83	1,126.27
		1,309.47	1,506.85	1,060.39
		153.52	93.09	65.88
LANSING	Income Expenses	2,893.31	1,686.13	1,633.50
		2,006.27	1,818.85	1,591.89
		887.04	132.72	41.61
MONROE	Income Expenses	1,550.20	1,070.50	796.03
		1,122.73	974.48	744.79
		427.47	96.02	51.24

[fol. 78]

[fol. 79]

Income & Expenses  
Motor NewsEx. D  
Monthly

December, 1936

## Income

	Dec. 1936	Nov. 1936	Dec. 1935
Subscriptions.....	7,509.65	6,202.00	4,580.00
Advertising Revenue.....	1,715.30	6,352.00	1,972.00
Miscellaneous.....	166.66	166.66	166.66
Syndicate Articles.....			35.90
Total Income.....	9,391.61	12,720.66	6,754.56

## Expenses

Salaries.....	600.00	573.75	555.00
Printing & Stationery.....	5,004.91	10,504.32	4,053.06
Telephone & Telegraph.....	32.01	39.06	22.80
Traveling.....	313.43	17.85	28.72
Commissions.....	380.25	1,440.50	419.25
Mailing.....	536.50	863.00	331.00
Editorials.....	193.50	75.00	50.00
Cuts.....	457.25	888.18	423.91
Miscellaneous.....	83.42	23.65	99.78
Arts.....	4.84	53.72	51.35
Agency Discount.....	564.79	169.28	813.32
Bad Accounts.....			59.16
Photos.....	3.00		
Bad Accounts.....	191.70		
Total Expenses.....	7,966.29	14,648.31	6,707.35
Income or Deficit.....	1,425.32	1,927.65	47.21

[fol. 80]

Condensed Statement  
Motor News

Ex. D (2)

For 12 Months Period—Jan. 1, 1936 to Dec. 31, 1936

## Income

Actual  
performance  
per cent  
of Budget

	Actual	Budget	Increase Decrease	
Subscriptions.....	83,956.90	70,000.00	13,956.90	119.3
Advertising Revenue.....	36,673.51	35,000.00	673.51	101.9
Miscellaneous.....	2,078.72	2,000.00	78.72	103.9
Total Income.....	121,709.13	107,000.00	14,709.13	113.7

## Expenses

Salaries.....	6,966.25	6,980.00	6.25	100.
Printing & Stationery.....	64,728.13	59,000.00	5,728.13	109.7
Telephone & Telegraph.....	339.17	350.00	10.83	96.9
Traveling.....	998.88	750.00	248.88	133.2
Commissions.....	7,712.50	8,000.00	287.50	96.4
Mailing.....	6,082.94	5,000.00	1,082.94	121.7
Editorials.....	1,188.00	575.00	611.00	206.3
Miscellaneous.....	683.65	350.00	333.65	195.3
Arts.....	255.53	250.00	5.53	102.2
Agency Discount.....	3,014.66	3,000.00	14.66	100.5
Bad Accounts.....		1,000.00	1,000.00	
Photos.....	168.95	100.00	68.95	169.
Total Expenses.....	96,462.74	88,735.00	7,727.74	108.7
Income or Deficit.....	25,246.39	18,265.00	6,981.39	139.2

[fol. 81]

Condensed Statement  
Income & Expenses

Ex. E (2)

For 12 Months Period—Jan. 1 thru Dec. 31, 1936

## Income

	Actual	Budget	Increase Decrease	Actual performance per cent of Budget
Memberships—Detroit . . .	468,941.15	394,500.00	74,441.15	118.9
Divisions . . .	371,539.63	305,500.00	66,039.63	121.6
Sales of Maps & Guides . . .	366.77		566.77	
Int. Earned & Misc. . . . .	13,516.87	8,800.00	4,716.87	153.6
Motor News Adv. & Misc. . .	37,752.23	37,000.00	752.23	102.
<b>Total Income . . . . .</b>	<b>892,318.65</b>	<b>745,800.00</b>	<b>146,518.65</b>	<b>119.6</b>

## Expenses

Executive . . . . .	36,328.15	37,710.00	1,381.85	98.3
Legal . . . . .	11,528.92	9,310.00	2,218.92	123.8
Touring . . . . .	59,703.71	45,015.00	14,688.71	132.6
Emer. Road Service . . . . .	89,452.46	66,585.00	22,867.46	134.3
Safety & Traffic . . . . .	24,418.32	21,635.00	2,783.32	112.9
Signs . . . . .	4,344.82	5,100.00	755.18	85.2
Membership Selling . . . . .	65,051.79	48,900.00	17,161.79	135.1
Accounting . . . . .	35,740.83	33,825.00	1,915.83	105.7
General . . . . .	75,530.74	62,850.00	12,880.74	120.6
Spec. Representative . . . . .	1,448.21	1,650.00	201.79	87.9
Spec. Appropriations . . . . .	29,802.78	16,350.00	13,452.78	182.3
Accident Policy . . . . .	18,916.17	14,825.00	4,091.17	127.8
Bldg. Rent & Maintenance . .	34,999.57	32,050.00	2,949.57	109.2
<b>Total Expenses . . . . .</b>	<b>488,266.47</b>	<b>395,605.00</b>	<b>92,661.47</b>	<b>122.</b>
Less overhead chg. to Divisions . . . . .	58,792.42	32,000.00	26,792.42	183.7
<b>Total Exp. Detroit . . . . .</b>	<b>429,474.05</b>	<b>353,605.00</b>	<b>65,869.05</b>	<b>118.1</b>
Motor News . . . . .	96,462.74	88,735.00	7,727.74	108.7
Divisions . . . . .	276,516.82	200,000.00	76,516.82	138.3
<b>Total Exp. All Sources . . .</b>	<b>802,453.61</b>	<b>652,340.00</b>	<b>150,113.61</b>	<b>123.</b>
<b>Net Income or Deficit . . . .</b>	<b>89,863.04</b>	<b>93,460.00</b>	<b>3,596.96</b>	<b>96.2</b>

Note: The item of Membership represents the total received from that source without setting aside \$1 per membership for subscriptions to Motor News

[fol. 82] **EXHIBIT 7 TO STIPULATION OF FACTS**

July 5, 1938

IT:RR:MM

Automobile Club of Michigan,  
139 Bagley Avenue,  
Detroit, Michigan.

Sirs:

Reference is made to the questionnaire and supporting data submitted in response to the request of the Bureau for the purpose of determining whether the exemption from income taxation under the provisions which now appear in Section 101 of the income tax law, to which you have heretofore been held to be entitled, is equally applicable under the Revenue Act of 1936.

Careful consideration has been given to the evidence submitted and as it appears that there has been no change in your form of organization or activities which would affect your status the previous ruling of the Bureau holding you to be exempt from filing returns of income is affirmed under the Revenue Act of 1936.

By direction of the Commissioner.

Respectfully, (Signed) John R. Kirk, Deputy Commissioner.

MM/ij 1

[fol. 83] **Exhibit A to Stipulation of Facts**

May 12, 1945

IT:P:T-1

FDF

Automobile Club of Michigan  
139 Bagley Avenue  
Detroit, Michigan

Gentlemen:

Reference is made to Bureau ruling of June 11, 1934, holding you entitled to exemption from Federal income tax under the provisions of section 103(9) of the Reve-



nue Act of 1932 and the corresponding provisions of prior revenue acts, which ruling was affirmed July 5, 1938, under the provisions of the Revenue Act of 1936.

The Bureau is now reconsidering the question of the exemption of automobile associations from Federal income tax in the light of the opinion of the Chief Counsel of the Bureau of Internal Revenue in regard thereto as set forth in G. C. M. 23688, C. B. 1943, 283.

It is therefore requested that you fill in all the information outlined on the enclosed Form 1025. Attention is called to the data requested in item 15. The classified statement of the receipts and expenditures referred to thereon should be submitted but it will not be necessary for you to furnish copies of your articles of incorporation and bylaws as copies thereof are on file in this office. However, if any changes have been made thereon, a copy of such amendments and the authorization therefor should be furnished.

The information requested in item 8 should cover all your actual activities during your last complete year of operation.

[fol. 84] The above information should be furnished the Bureau within thirty days from the date of this letter, marked for the attention of IT:P:T-1-FDF.

Very truly yours,

Norman D. Cann, Deputy Commissioner, By  
(Signed) L. K. Sunderlin, Chief of Section

Enclosure:

Form 1025  
FDFoley/em-3

5-5-45

**Exhibit 8 to Stipulation of Facts****AUTOMOBILE CLUB OF MICHIGAN**

Telephone Cherry 2911

139 Bagley Avenue

Detroit 26, Michigan

June 11, 1945

Commissioner of Internal Revenue  
Washington, D. C.

~~In~~ re: Automobile Club of Michigan  
139 Bagley Avenue,  
Detroit 26, Michigan

Symbols: IT:P:T-1:FDF

Sir:

Pursuant to request contained in your letter of May 12, 1945, there is enclosed herewith Form 1025—Exemption Affidavit.

[fol. 85] The form is completely filled out in accordance with your request, together with additional information which is attached.

Very truly yours,

J. C. Sasser

Assistant Treasurer

Encs.

Form 1025

Treasury Department  
Internal Revenue Service

(Revised Feb. 1943)

## EXEMPTION AFFIDAVIT

For Use of Organizations Claiming Exemption from Federal Income Tax as Social Clubs under Section 101(9) of the Internal Revenue Code and the Corresponding Provisions of Prior Revenue Acts.

(To be made only by a principal officer of the organization claiming exemption)

(Form 990 should be filed with this affidavit)

State of Michigan,  
County of Wayne—ss.

John A. Brown deposes and says that he is the First Vice President of the Automobile Club of Michigan located at 139 Bagley Avenue, Detroit 26, Michigan and that the following answers and statements, including all statements attached hereto, are complete and true to the best of his knowledge and belief:

1. Is the organization incorporated? Yes. If so, under the laws of what State? Michigan. When? July 24, 1930. If not incorporated, state the manner of organization and the date thereof.....

[fol. 86] 2. Is the organization the outgrowth or continuation of any form of predecessor? Yes. If so, state the name of such predecessor and the period during which it was in existence—The Detroit Automobile Club. Incorporated July 21, 1916. Name changed to Automobile Club of Michigan on April 17, 1931.

3. Has the organization filed Federal income tax returns? No. If so, for what year or years?.....

4. State briefly the specific purposes for which the organization was formed. (Do not quote from, or make reference to, the articles of incorporation or bylaws for this purpose.) To provide a non profit corporation where members could secure automobile club services—such as touring information, emergency road service and state licenses of various kinds; to encourage touring over permanent highways; aiding in securing uniform motor laws and ordinances; keeping the members informed of

matters of interest through the Motor News and educating and training members in the principles of safety first in order to prevent highway accidents.

5. Is the organization authorized to issue capital stock? No. If so, state (1) the class or classes of such stock, (2) the number and par value of shares of each class outstanding and (3) the consideration paid for outstanding shares .....

6. If capital stock is outstanding, state whether any dividends or interest has been or may be paid thereon ..... If so, give facts in detail. ....

7. If any distribution of corporate property of any character has ever been made to shareholders or members, attach hereto a separate statement containing full details thereof, including (1) amounts or value, (2) source of funds or property distributed, and (3) basis of and authority for distribution.

8. What specific activities is the organization presently engaged in? (Explain in detail) Providing travel information and service; rendering emergency road service; [fol. 87] publishing the Motor News; locating automobile parts for members' cars to keep them in service; providing safety education in public and parochial schools; organizing and equipping school patrols consisting of 38,000 boys and providing traffic surveys for Michigan cities in the interest of safety.

9. State all sources from which income or receipts are derived—Membership dues, advertising from the Motor News and interest on investments.

10. State the purposes for which expenditures are made—Rendering service to members.

11. State whether others than members and their guests are permitted to use the club facilities, participate in or attend tournaments conducted by the organization, etc.—No.

If so, state the amount received from these nonmember sources during the last complete year of operation, \$. ....

12. Is any part of the club's property rented or leased to others? ..... If so, state the reasons for such—The Detroit Automobile Inter-Insurance Exchange, selling automobile insurance to members only of the Club, occupies

jointly with the Club a certain portion of its property for which annual financial adjustments are made.

The property was on the corner of Cass and Vernor Avenue, Detroit, Michigan. Before the property was entirely paid for we sold our interest of \$101,875.56 for \$121,253.97 in March 1925. The entire amount was applied on the cost of alterations to our present Main office building in 1926. This property was originally acquired with the intention of building a home office building for the club.

13. Has the club ever sold any real property? Yes. If so, attach hereto a complete statement thereto, including reasons for the sale or sales, amounts received, and disposition made of the proceeds.

14. Does any part of the net income inure to the benefit of any private shareholder or individual? No.

[fol. 88] 15. Attach to this affidavit a classified statement of the receipts and expenditures of the organization during the last complete year of operation and a complete statement of the assets and liabilities as of the end of that year; a copy of the articles of incorporation, if incorporated, or if not incorporated, a copy of the constitution, articles of association, or other document setting forth the aims and purposes of the organization; and a copy of the bylaws, or other similar code of regulations.

A mere claim or contention by an organization that it is exempt from income tax under section 101 of the Internal Revenue Code and the corresponding provisions of prior revenue acts, will not relieve the organization from filing income tax returns and paying the tax. Unless the Commissioner has determined that an organization is exempt, it must prepare and file a complete income tax return for each taxable year of its existence. Accordingly, every organization that claims to be exempt should furnish the information and data specified herein, together with any other facts deemed material to the question, with the least possible delay, in order that the Commissioner can determine whether or not it is exempt. As soon as practicable after the information and data are received, the organization will be advised of the Commissioner's de-



termination, and, if it is held to be exempt, no further returns of income will be required.

John A. Brown (Signature of officer making affidavit), 1st Vice President

Subscribed and sworn to before me this 5th day of June, 1945.

Fred N. Rehmi (Signature of officer administering oath), Notary Public, Comm. Ex. Jan. 21, 1946.

[Notary's Seal]

[fol. 89]

### Balance Sheet

Automobile Club of Michigan  
December 31, 1944.

Assets		
Cash .....		414,876.30
Accounts Receivable:		
Motor News, less reserve of \$1,000.00 .....	2,003.50	
Detroit Automobile Inter-Ins. Exchange and Miscellaneous .....	28,901.76	30,905.26
<b>OTHER ASSETS</b>		
Investment securities, less reserve of \$13,000.00 to reduce to quoted market prices .....	1,920,689.87	
Accrued interest, claims against closed banks, and travel advances .....	9,501.85	1,930,191.72
Property and Equipment .....		100,423.14
Deferred Charges .....		21,810.96
		<u>2,498,207.38</u>
Liabilities		
Accounts payable:		
For expenses .....	100,578.99	
Salaries and commissions .....	5,022.95	
Payroll Taxes .....	7,320.17	
Miscellaneous .....	1,698.32	174,620.43
Deferred Income .....		976,115.14
Reserve For Post-War Personnel Adjustments .....		47,000.00
Operating Fund Reserve .....		1,300,471.81
		<u>2,498,207.38</u>

[fol. 90]

**Exhibit B to Stipulation of Facts**

July 16, 1945

IT:P:T:1

FDF

Automobile Club of Michigan  
139 Bagley Avenue  
Detroit 26, Michigan

Gentlemen:

Reference is made to the information submitted by you for use in determining your status for Federal income tax purposes in view of the opinion expressed in G. C. M. 23688, C. B. 1943, 283.

Under date of June 11, 1934 you were held entitled to exemption from Federal income tax under the provisions of section 103(9) of the Revenue Act of 1932 and the corresponding provisions of prior revenue acts, which rulings was affirmed July 5, 1938, under the provisions of the Revenue Act of 1936.

The information recently submitted by you shows that your activities consist of providing travel information and service, rendering emergency road service, publishing the Motor News, locating automobile parts for members' cars to keep them in service, providing safety education in public and parochial schools, organizing and equipping school patrols and providing traffic surveys for Michigan cities in the interest of safety. Your income is derived from membership dues, interest on investments, and advertising in the Motor News. It is expended for rendering services to your members.

[fol. 91] Section 101(9) of the Internal Revenue Code provides for the exemption of:

"Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder."

Prior revenue acts carry similar provisions.

This office holds that the term "club" as used in the above section of law contemplates commingling of members, one with the other in fellowship. Thus, an organization should be so composed and its activities be such that fellowship among the members plays a material part in the life of the organization in order for it to come within the meaning of the term "club".

The evidence submitted shows that fellowship does not constitute a material part of the life of your organization and that your principal activity is the rendering of commercial services to your members.

It is, accordingly, held that you are not a club "organized and operated exclusively for pleasure, recreation and other nonprofitable purposes", within the meaning of section 101(9) of the Internal Revenue Code or the corresponding sections of prior revenue acts, and, therefore, are not entitled to exemption under those sections. Furthermore, there is no other provision of law under which an organization of your character can be held to be exempt from Federal income tax.

Bureau rulings of June 11, 1934 and July 5, 1938 are hereby revoked.

In view of all the facts and circumstances in your case it is held, with the approval of the Secretary of the Treasury, that you will not be required to file income tax returns for years beginning prior to January 1, 1943. [fol. 92] You are, however, required to file returns for the year 1943 and subsequent years.

By direction of the Commissioner.

Very truly yours,

(Signed) Norman D. Cann  
Deputy Commissioner

FEF/mes-z

7-7-45

(Here follows 3 Pastors, folios 93, 94, 95)



[fol. 93]

## EXHIBIT 9. TO STIPULATION OF FACTS

## Balance Sheets

## Automobile Club of Michigan

	Dec. 31-1934	Dec. 31-1935	Dec. 31-1936	Dec. 31-1937	Dec. 31-1938	Dec. 31-1939	Dec. 31-1940	Dec. 31-1941
<b>Assets</b>								
Cash.....	\$135,571.65	\$137,427.80	\$176,060.97	\$148,106.67	\$ 121,553.97	\$ 126,223.97	\$ 118,432.11	\$ 155,379.26
Accounts receivable, less reserve.....	13,244.02	16,630.95	19,508.77	21,149.28	20,396.44	16,599.09	19,051.61	22,382.70
Cash on deposit—reserved for the purchase of investment securities.....	—0—	15,247.52	12,760.28	7,727.00	105,619.44	105,464.63	334,222.73	442,296.00
United States Savings bonds.....	—0—	—0—	15,100.00	23,000.00	31,100.00	39,400.00	47,900.00	99,038.00
Other United States Government securities.....	87,595.78	171,290.85	201,842.70	299,401.57	315,301.57	377,926.64	368,871.70	393,238.11
Municipal bonds.....	88,625.55	80,508.25	76,908.23	70,824.89	58,725.29	76,857.95	56,980.94	56,841.72
Public utility bonds.....	—0—	15,375.00	20,425.00	106,375.00	153,537.50	152,942.88	179,269.87	179,049.99
Domestic corporation bonds.....	64,252.60	29,690.10	29,096.10	18,910.62	71,349.23	67,787.06	44,658.89	33,782.02
Domestic corporation stocks.....	3,510.00	4,178.50	53,564.62	80,593.14	84,646.96	94,516.67	94,192.75	94,192.75
Reserve to reduce securities to approximate aggregate quoted market prices.....	—0—	—0—	—0—	—0—	—0—	—0—	—0—	(24,000.00)
Accrued interest on bonds.....	10,664.31	10,995.17	12,860.14	8,477.39	7,729.79	7,976.72	3,215.49	3,488.05
Miscellaneous accounts and deposits.....	33,108.78	29,755.29	21,917.18	20,927.45	14,636.44	13,640.00	1,634.15	1,669.15
Land.....	—0—	—0—	—0—	—0—	—0—	—0—	—0—	28,522.61
Buildings.....	—0—	—0—	—0—	—0—	—0—	—0—	—0—	20,975.96
Leasehold improvements.....	177,025.73	177,025.73	—0—	—0—	—0—	—0—	—0—	—0—
Furniture and equipment.....	68,258.96	49,919.06	—0—	—0—	—0—	—0—	—0—	—0—
Automobiles and trucks.....	3,613.47	4,729.35	5,270.75	5,324.92	6,646.88	7,748.71	11,319.48	12,358.07
Reserves for depreciation.....	(182,412.40)	(186,610.78)	(1,615.65)	(1,926.88)	(2,285.60)	(2,753.58)	(2,858.43)	(2,990.91)
Deferred charges:								
Maps and supplies.....	9,650.00	10,105.61	10,331.67	10,189.69	10,184.48	10,637.39	10,537.88	10,641.89
Taxes and insurance.....	5,420.47	5,383.26	5,748.53	5,677.29	6,409.35	8,229.47	5,775.61	6,136.79
	<u>\$518,128.92</u>	<u>\$571,651.66</u>	<u>\$659,779.29</u>	<u>\$824,758.03</u>	<u>\$1,005,551.74</u>	<u>\$1,103,197.60</u>	<u>\$1,293,195.78</u>	<u>1,533,002.16</u>
<b>Liabilities</b>								
Accounts payable.....	\$ 16,856.93	\$ 32,543.58	\$ 52,994.67	\$ 62,584.89	\$ 74,362.42	\$ 75,303.44	\$ 107,952.26	\$ 120,360.94
Deferred income:								
Unearned membership dues.....							653,337.56	771,937.52
Collections on memberships issued on a deferred payment basis.....	3,711.86	5,064.75	6,966.71	6,497.51	10,282.80	11,093.17	11,734.48	10,125.35
Investment fluctuation and general contingency reserve.....	50,000.00	45,217.69	44,766.47	40,111.68	39,688.10	39,641.85	—0—	—0—
Net worth:								
Deferred income.....	178,832.39	194,216.13	353,181.99	479,015.93	518,232.11	570,209.37	520,171.48	630,578.35
Operating fund.....	268,727.74	294,609.51	201,869.45	236,548.02	362,986.31	406,949.77		
	<u>\$518,128.92</u>	<u>\$571,651.66</u>	<u>\$659,779.29</u>	<u>\$824,758.03</u>	<u>\$1,005,551.74</u>	<u>\$1,103,197.60</u>	<u>\$1,293,195.78</u>	<u>\$1,533,002.16</u>



## EXHIBIT 10 TO STIPULATION OF FACTS

[fol. 94]

Balance Sheets  
Automobile Club of Michigan

	Dec. 31-1942	Dec. 31-1943	Dec. 31-1944	Dec. 31-1945	Dec. 31-1946	Dec. 31-1947
<b>Assets</b>						
Cash.....	\$ 325,496.97	\$ 321,247.60	\$ 380,234.73	\$ 240,383.42	\$ 406,866.08	\$ 415,776.12
Accounts receivable, less reserve.....	26,625.11	27,412.21	30,905.26	42,739.48	25,539.36	70,472.52
Cash on deposit—reserved for the purchase of investment securities.....	17,842.55	52,920.01	34,641.57	64,629.46	—0—	—0—
United States Savings bonds.....	200,406.50	302,209.80	404,347.90	483,888.20	476,412.67	469,039.50
Other United States Government securities.....	798,676.11	1,017,179.38	1,230,179.24	1,172,375.63	1,115,039.51	1,046,059.17
Municipal bonds.....	56,702.50	56,563.28	56,424.06	51,297.36	51,158.16	51,018.96
Public utility bonds.....	178,830.61	178,611.23	163,081.93	102,900.92	102,741.56	72,301.97
Domestic corporation bonds.....	32,672.12	31,555.10	17,960.62	13,960.62	2,067.10	2,067.10
Domestic corporation stocks.....	90,650.12	67,766.12	67,766.12	—0—	—0—	—0—
Reserve to reduce securities to approximate aggregate quoted market prices.....	24,000.00	13,000.00	9,000.00	—0—	—0—	—0—
Accrued interest on bonds.....	5,435.12	7,373.16	8,399.82	7,496.50	7,139.00	6,870.82
Miscellaneous accounts and deposits.....	1,350.19	1,667.18	1,102.03	1,685.00	2,893.38	4,068.11
Land.....	28,522.61	28,522.61	64,420.64	472,731.64	491,056.64	491,056.64
Buildings.....	35,554.66	35,554.66	35,554.66	35,554.66	35,554.66	35,554.66
Automobiles and trucks.....	13,076.07	18,623.25	14,438.09	9,992.23	8,037.88	30,576.44
Reserves for depreciation.....	7,110.74	12,091.19	13,999.25	12,209.34	12,992.82	14,448.14
Deferred charges:						
Premium of pension trust fund for employees.....	—0—	—0—	14,000.00	22,739.29	27,109.40	28,896.36
Maps and supplies.....	10,300.83	—0—	—0—	—0—	—0—	—0—
Taxes, insurance, and rent.....	8,269.39	8,129.63	7,810.96	13,741.26	13,780.81	13,347.18
	<u>\$1,799,300.72</u>	<u>\$2,130,244.03</u>	<u>\$2,498,207.38</u>	<u>\$2,723,906.33</u>	<u>\$2,752,403.39</u>	<u>\$2,722,657.41</u>
<b>Liabilities</b>						
Accounts payable.....	\$ 117,400.72	\$ 139,831.90	\$ 174,620.43	\$ 285,017.37	\$ 298,248.96	\$ 266,728.09
Deferred income:						
Unearned membership dues.....	753,229.15	888,924.50	972,917.41	1,049,902.85	1,198,902.97	1,263,426.79
Collections on memberships issued on a deferred payment basis.....	6,934.28	3,981.30	2,867.73	3,081.10	—0—	—0—
Unearned advertising revenue.....	1,542.73	1,275.48	330.00	—0—	—0—	—0—
Reserve for post-war personnel adjustments.....	—0—	50,000.00	47,000.00	—0—	—0—	—0—
Building fund reserve.....	—0—	—0—	—0—	—0—	—0—	925,000.00
Operating fund reserve:						
Balance at beginning of year.....	630,578.35	920,193.84	1,046,230.85	1,300,471.81	1,385,905.01	1,255,251.46
Write-off of inventories of office supplies, maps, and emblems.....	—0—	9,550.00	—0—	—0—	—0—	—0—
Adjustments to surplus reserves.....	—0—	39,000.00	3,000.00	66,000.00	—0—	925,000.00
Federal capital stock tax applicable to prior year.....	—0—	—0—	—0—	12,312.50	—0—	—0—
Net income for the year.....	289,615.49	174,587.01	257,240.96	32,245.70	130,653.55	62,748.93
	<u>\$1,799,300.72</u>	<u>\$2,130,244.03</u>	<u>\$2,498,207.38</u>	<u>\$2,723,906.33</u>	<u>\$2,752,403.39</u>	<u>\$2,722,657.41</u>

NOTE: Italic figures shown in red on original.

The amount of the reserve deducted from accounts receivable in the balance sheets is \$1,000.00 for each year.

The operating fund reserve at the beginning of the year 1942 reflects a net charge of \$1,786.61 in connection with the acquisition of other clubs prior to January 1, 1943.



## EXHIBIT 11 TO STIPULATION OF FACTS

## Statements of Income and Expense

## Automobile Club of Michigan

Year Ended

	Dec. 31-1934	Dec. 31-1935	Dec. 31-1936	Dec. 31-1937	Dec. 31-1938	Dec. 31-1939	Dec. 31-1940	Dec. 31-1941
Membership dues.....	\$542,183.39	\$604,494.29	\$840,480.78	\$1,155,980.00	\$1,199,988.23	\$1,324,940.33	\$1,489,785.97	\$1,770,375.31
Sales of maps and guides.....	1,823.80	530.00	566.77	382.00	247.05	314.20	249.82	207.57
Rental income.....	52,584.00	52,584.00	52,584.00	56,184.00	56,184.00	50,027.88	47,300.48	40,754.77
Interest earned.....	8,171.37	8,337.69	12,621.05	11,532.11	15,431.68	15,080.05	16,104.92	17,978.09
Dividends received.....	—0—	—0—	—0—	3,100.50	3,543.40	4,007.00	4,273.00	4,564.00
Motor News advertising.....	23,744.92	35,635.92	37,752.23	44,105.68	37,613.37	45,067.12	52,851.13	54,217.27
Gain on disposal of investment securities.....	—0—	—0—	—0—	—0—	—0—	—0—	510.44	181.50
Gain on disposal of automobiles.....	—0—	—0—	—0—	—0—	—0—	—0—	510.60	—0—
Unclassified.....	437.66	523.81	895.82	1,054.98	563.28	786.80	636.33	2,590.16
Gross Income	\$628,945.14	\$72,105.71	\$944,900.65	\$1,272,339.27	\$1,313,571.01	\$1,440,223.38	\$1,612,222.69	\$1,890,868.67
Expenses.....	607,930.48	660,840.20	855,037.61	1,122,326.76	1,147,916.54	1,304,685.10	1,450,979.98	1,637,861.84
Net Income (on the basis of dues collected)...	\$ 21,014.66	\$ 41,265.51	\$ 89,863.04	\$ 150,012.51	\$ 165,654.47	\$ 135,538.28	\$ 161,242.71	\$ 253,006.83
Deduct adjustment for unearned membership dues, less commissions applicable thereto.....							83,128.19	118,599.96
Net Income (on the basis of dues earned)							\$ 78,114.52	\$ 134,406.87

[fol. 96]

# EXHIBIT 12 TO STIPULATION OF FACTS

## Statements of Income and Expense

### Automobile Club of Michigan

	Year Ended					
	Dec. 31-1942	Dec. 31-1943	Dec. 31-1944	Dec. 31-1945	Dec. 31-1946	Dec. 31-1947
Membership dues.....	\$1,862,822.31	\$1,993,695.13	\$2,154,137.70	\$2,353,345.16	\$2,598,978.63	\$2,849,504.94
Sales of maps and guides.....	58.80	61.05	64.40	50.15	57.45	
Rental income.....	36,936.48	36,936.48	37,623.25	39,956.48	58,567.52	48,756.48
Interest earned.....	28,593.82	34,420.90	40,429.10	46,051.06	41,374.74	39,425.75
Dividends received.....	3,905.00	2,885.00	2,560.00	1,195.00	—0—	—0—
Motor News advertising.....	43,184.90	47,829.50	59,366.55	71,713.14	81,452.50	82,148.00
Gain on disposal of investment securities.....	729.78	1,040.32	564.08	4,538.43	1,896.59	3,927.15
Gain on disposal of automobiles.....	—0—	—0—	—0—	—0—	913.67	14,215.23
Unclassified.....	1,107.53	1,379.78	1,843.80	265.64	4,333.98	7,279.45
Gross Income	\$1,977,338.62	\$3,118,612.16	\$2,296,588.88	\$2,508,038.20	\$2,787,575.08	\$3,045,257.00
Expenses.....	1,687,723.13	1,944,025.15	2,039,347.92	2,475,792.50	2,918,228.63	3,108,005.93
Net Income—Loss	\$ 289,615.49	\$ 174,587.01	\$ 257,240.96	\$ 32,245.70	\$ 130,653.55	\$ 62,748.93

NOTE: Words and figures in italics shown in red on original.



[fol. 97]

## EXHIBIT 13 TO STIPULATION OF FACTS

Form 1120  
Treasury Department  
Internal Revenue Service

United States

Corporation Income and Declared Value  
Excess-Profits Tax Return  
For Calendar Year 1943

Automobile Club of Michigan  
139 Bagley Avenue  
Detroit 26, Michigan  
Kind of business—Automobile club

Normal-Tax Net Income Computation  
Gross Income

4. Gross receipts (where inventories are not an income-determining factor) . . .	\$1,993,695.13		
6. Gross profits where inventories are not an income-determining factor . . . . .	\$1,993,695.13		
7. Interest on loans, notes, mortgages, bonds, bank deposits, etc. . . . .			774.15
8. Interest on corporation bonds,			
		Less:	
		Amortizable	
		Bond	
		Premium	
etc. . . . .	\$6,737.50	\$ 296.90	6,440.60
9. (a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of \$5,000 issued prior to March 1, 1941. (From Schedule M, line 15 (a) (2) (iii)) . . . . .	10,154.27	1,482.81	8,671.46
9. (b) Interest on Treasury notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Sumbit schedule) . . . . .	17,500.33	13.92	17,486.41
10. Rents . . . . .			36,936.48
12. (a) Net gain from sale or exchange of capital assets. (From Schedule C) . . . . .			1,404.32
13. Dividends. (From Schedule E) . . . . .			2,885.00
14. Other income. (State nature) Schedule attached . . . . .			50,652.43
15. Total income in items 3, and 6 to 14, inclusive . . . . .			\$2,118,945.98

[fol. 98]

## Deductions

16.	Compensation of officers. (From Schedule F).....	\$	35,100.00	
17.	Salaries and wages (not deducted elsewhere).....		542,247.01	
18.	Rent.....		72,570.26	
19.	Repairs.....		8,892.59	
20.	Bad debts. (From Schedule G).....		375.00	
22.	Taxes. (From Schedule H) (Deduct declared value excess-profits tax as item 34).....		33,371.74	
23.	Contributions or gifts paid. (From Schedule I) \$14,750.00, limited to.....		8,555.27	
25.	Depreciation. (From Schedule J).....		14,355.82	
29.	Other deductions authorized by law. (From Schedule K).....		1,241,813.85	
30.	Total deductions in items 16 to 29, inclusive.....			1,957,281.54
31.	Net income for declared value excess-profits tax computation (item 15 minus item 30).....	\$		161,664.44
32.	Add: Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (3) (ii))..... \$1,025.00 Less amortizable bond premiums, \$139.22.....			885.75
33.	Total of lines 31 and 32.....	\$		162,550.19
34.	Less: Declared value excess-profits tax.....			—0—
35.	Net income.....	\$		162,550.19
36.	Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of lines 9 (a) and 32).....			9,557.21
37.	Adjusted net income.....	\$		152,992.98
38.	Less: Income subject to excess profits tax. (From Form 1121).....		\$35,867.06	
39.	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37 minus item 38, above).....		2,452.25	38,319.31
40.	Normal-tax net income.....	\$		114,673.67
Total Income and Declared Value Excess-Profits Taxes				
41.	Total income tax (line 28 or 50, page 2, whichever is applicable).....			
42.	Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation. Exemption claimed as set forth in attached rider.....			
44.	Total declared value excess-profits tax (line 8, page 2).....			No Tax



[fol. 99]

## Affidavit. (See Instruction E)

We, the undersigned, president (or vice-president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

"John E. Brown" 1st. B. Pres.

"J. C. Sasser" Ass't Treas.

(Corporate Seal)

Subscribed and sworn to before me this 18th day of October, 1945.

"Fred N. Rehm" Notary Public

Expires Jan. 21, 1946

(Notarial Seal)

## Affidavit. (See Instruction E)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

M. M. Jensen

Ernst &amp; Ernst

Subscribed and sworn to before me this 18th day of October, 1945.

Esther L. Trout Notary Public

My commission expires May 28, 1946

(Notarial Seal)

Page 2

## Declared Value Excess-Profits Tax Computation

(See Computation Instructions)

1. Net income for declared value excess-profits tax computation (item 31, page 1).....		\$161,664.41
2. Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1943 (or for year ended June 30, 1944, if your income tax fiscal year began in 1943 and ended on or after July 31, 1944).....	\$3,250,000.00	
3. 10 percent of line 2.....	\$ 325,000.00	
4. Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37 minus item 38, page 1).....	2,452.25	327,452.25
5. Balance subject to declared value excess-profits tax (line 1 minus total of lines 3 and 4).....		None

[fol. 100]

## Schedule E.—Income From Dividends

Schedule attached

## Schedule F.—Compensation of Officers

1. Name and Address of Officer	2. Official Title	3. Time Devoted to Business	6. Amount of Compensation
Richard Harfst	Assistant Secretary and General Manager	All	\$23,000.00
J. C. Sasser	Assistant Treasurer	All	12,100.00
Total compensation of officers. (Enter as item 16, page 1)			\$35,100.00

## Schedule G.—Bad Debts. (See Instruction 20) (See notes 1 and 2)

1. Taxable Year	5 Gross Amount Added to Reserve
1943	\$375.00

1. Check whether deduction claimed represents debts which have become worthless [X], or is an addition to a reserve [ ].
2. Not including securities which are capital assets and which became worthless within the taxable year. Such securities which became worthless within the year should be reported in Schedule C.

Schedule H.—Taxes.  
(See Instruction 22)

Nature	Amount
Pay roll taxes	\$16,107.31
Local property taxes	8,726.93
Federal capital stock	8,537.50
Total. (Enter as item 22, page 1)	\$33,371.74

## Schedule I.—Contributions or Gifts Paid. (See Instruction 23)

Name and Address of Organization	Amount
American Red Cross	\$ 5,000.00
War Chest of Metropolitan Detroit	9,750.00
Total. (Enter as item 23, page 1, subject to 5 percent limitation.) (See Instruction 23)	\$14,750.00

[fol. 101]

## Schedule K.—Other Deductions (See Instruction 29)

Schedule attached

## Questions

1. Date of incorporation—July 21, 1916.
2. State or country—Michigan.
3. State collector's office where the corporation's return for the preceding year was filed—None required.
4. The corporation's books are in care of J. C. Sasser. Located at 139 Bagley Avenue, Detroit.
5. Number of places of business—34.
6. Did the corporation during the taxable year have any Government contracts or subcontracts? (Answer "yes" or "no"). No. If answer is "yes," state the approximate aggregate gross dollar amount billed during the taxable year under all such contracts and/or subcontracts. (See Instruction G-(3).)
7. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code? -No. (If so, an additional return on Form 1120 H must be filed.)
8. Is this a consolidated return? No. (If so, procure from the collector of internal revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return.)
9. If this is not a consolidated return: (a) did you own at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign? No; or (b) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 50 percent or more of your voting stock? Not applicable. (If either answer is "yes," attach separate schedule showing: (1) Name and address; (2) percentage of stock owned; (3) date stock was acquired; and (4) the collector's office in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed.)
10. Is this return made on the basis of cash receipts and disbursements? No. If not, describe fully in separate statement.
11. Did the corporation at any time during its taxable year have in its employ more than eight individuals? (Answer "yes" or "no") Yes. If answer is "yes," has the corporation in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate? (Answer "yes" or "no") Yes. If answer to second question is "yes," attach statement explaining all such increases or decreases. If any of such increases or decreases required the prior approval of the National War Labor Board or the Commissioner of Internal Revenue as stated in Instruction 16, attach also a copy of the authorization for each of such increases or decreases.
12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. Not applicable. If other basis is used, explain fully in separate statement, giving date inventory was last reconciled with stock.
13. Did the corporation make a return of information on Forms 1096 and 1099 or Forms V-2 and W-2 for the calendar year 1943 (see Instruction G-(1))? Yes.
14. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? (Answer "yes" or "no") No. (If answer is "yes," attach statement as required by Instruction K-(3).)



[fol. 102]

Page 4

## Schedule L.—Balance Sheets. (See Instruction L)

Assets	Beginning of Taxable Year Amount	Total	End of Taxable Year Amount	Total
1. Cash.....	\$	343,339.52	\$	374,167.61
2. Notes and accounts re- receivable.....	\$ 27,625.11		\$ 28,412.21	
Less: Reserve for bad debts.....	1,000.00	26,625.11	1,000.00	27,412.21
3. Inventories (itemize in sep- arate schedule).....		10,300.83		<u>—0—</u>
4. Investments in govern- mental obligations:				
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Colum- bia, or United States possessions.....	\$ 56,702.50		\$ 56,563.28	
(b) Obligations of the United States:				
(2) United States savings bonds and Treasury bonds is- sued prior to March 1, 1941....	370,847.34		335,864.53	
(3) Treasury notes is- sued on or after December 1, 1940; and all other obli- gations of the United States is- sued on or after March 1, 1941....	628,235.27		983,524.65	
(c) Obligations of instru- mentalities of the United States:				
(3) Obligations of all instrumentalities of the United States issued on or after March 1, 1941....		1,055,785.11		1,375,952.46
5. Other investments (item- ize).....		302,152.85		277,932.45
6. Capital assets:				
(a) Depreciable assets (itemize in separate schedule).....	48,630.73		54,177.91	
Less: Reserve for de- preciation.....	7,110.74	41,519.99	12,091.19	42,086.72
(c) Land.....		28,522.61		28,522.61
7. Other assets (itemize).....		15,054.70		17,169.97
8. Total Assets.....		<u>\$1,823,300.72</u>		<u>\$2,143,244.03</u>

[fol. 103]

## Liabilities

9. Accounts payable.....	\$ 117,400.72	\$ 139,831.90
12. Other liabilities (itemize):		
Deferred dues.....	\$760,163.43	\$892,905.80
Unearned advertising...	1,542.73	894,181.28
13. Surplus reserves (itemize in separate schedule).....	24,000.00	63,000.00
16. Earned surplus and un- divided profits.....	920,193.84	1,046,230.85
17. Total Liabilities.....	\$1,823,300.72	\$2,143,244.03

Excess Profits Tax. (See Instructions for Form 1121)

(a) Is an excess profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes.

Automobile Club of Michigan  
Detroit, Michigan

Statement Attached to 1943 Corporation Income and  
Declared Value Excess Profits Tax Return

The attached 1943 Corporation Income and Declared Value Excess Profits Tax Return of Automobile Club of Michigan is filed under protest for the reason that the Automobile Club of Michigan believes that it is exempt from income tax under Section 101-9 of the Internal Revenue Code.

Rulings of the Commissioner of Internal Revenue under dates of June 11, 1934, and July 5, 1938, specifically held that the Automobile Club of Michigan was exempt from the imposition of Federal income taxes under the provisions of said Section of the Code. Said rulings likewise relieved the Automobile Club of Michigan of liability for filing Federal corporation income tax returns. A letter from Mr. Norman D. Cann, Deputy Commissioner of Internal Revenue, under date of July 16, 1945, purports to revoke the Bureau's Rulings aforesaid and directs that the Automobile Club of Michigan file a Federal corporation income tax return for the calendar year 1943. The attached return is filed solely by reason of the receipt of the aforesaid letter and pursuant to its requirements.

The attached corporation income tax return shows items of gross income received by the Automobile Club of Michigan for the calendar year 1943 and deductions properly allowable and the amount of net income resulting. It does not show any tax computation because the Automobile Club of Michigan deems that the aforesaid purported revocation is contrary to the provisions of the Internal Revenue Code applicable to the Automobile Club of Michigan. Consequently no tax is being paid herewith.

The attached 1943 return was not filed at the time required by law for the filing of 1943 corporation income tax returns for the reason that on said date there was a ruling of the Commissioner of Internal Revenue in effect, holding that the Automobile Club of Michigan was exempt from taxation under Section 101-9 of the Internal Revenue Code. The attached corporation income tax return is being filed pursuant to instructions at as early a date following the receipt of the letter of Mr. Norman D. Cann above referred to as pos-

[fol. 104]

sible, since the preparation of this and other returns required by said letter required a substantial amount of time. Delay in filing this corporation income tax return is due to the aforesaid cause and is not due to wilful negligence or intent to evade tax on the part of the Automobile Club of Michigan.

Automobile Club of Michigan  
By "John E. Brown"

1st Vice President

By "J. C. Sasser"

Assistant Treasurer

Dated: October 17, 1945



## EXHIBIT 14 TO STIPULATION OF FACTS

Internal Revenue Service  
Treasury Department  
Form 1121

Page 1

United States  
Corporation Excess Profits Tax Return  
For Calendar Year 1943

Automobile Club of Michigan  
139 Bagley Avenue  
Detroit 26, Michigan

## Excess Profits Tax Computation

Item and Instruction No.	Column 1 Income Credit Method	Column 2 Invested Capital Credit Method
1. Excess profits net income (line 16, Schedule A) . . . . .	\$148,703.66	
2. Specific exemption . . . . .	\$ 5,000	\$ 5,000
3. Excess profits credit—based on income (line 46, Schedule B) . . . . .		x x x x x x
4. Excess profits credit—based on invested capital (line 41, Schedule C) . . . . .	x x x x x x	
5. Unused excess profits credit adjustment (attach schedule) . . . . .	107,836.60	
6. Total of items 2 to 5 . . . . .	\$112,836.60	\$ . . . . .
7. Difference between item 1 and item 6 . . . . .	\$ 35,867.06	\$ . . . . .
8. Adjusted excess profits net income (Item 7, column 1 or column 2, whichever is applicable) . . . . .		\$35,867.06
20. Item 18 (c) minus item 19 . . . . .		\$ . . . . .
Exemption claimed as set forth in attached rider		
24. Excess profits tax due (item 22 plus item 23, or item 22 minus item 23, whichever is applicable) . . . . .		\$ No tax

[fol. 105]

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

"John E. Brown" 1st. V. Pres.

"J. C. Sasser" Ass't. Treas.

(Corporate Seal)

Subscribed and sworn to before me this 18th day of October, 1945.

"Fred N. Rehm" Notary Public

Expires Jan. 21, 1946

(Notarial seal)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules or statements) is a true, correct, and complete statement of all the information respecting the excess profits tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

M. M. Jensen

Ernst & Ernst

Subscribed and sworn to before me this 18th day of October, 1945.

Esther L. Trout Notary Public

My commission expires May 28, 1946

(Notarial Seal)

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### Questions

- (a) Date of incorporation—July 21, 1916. (b) State or country—Michigan.
- (c) Collector's office in which your income tax return for the taxable year was filed—Detroit.
- (d) Is this a consolidated return? No. If so, procure from the collector Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of the consolidated income tax return.
- (e) In computing the excess profits credit under the invested capital method, do you elect to include in excess profits net income interest received on, reduced by the amount of amortizable bond premium under section 125 attributable to, all Government obligations described in section 22(b) (4) of the Internal Revenue Code? (Answer "yes" or "no")—Yes
- (f) Are you a transferor or transferee upon an exchange as defined by section 760 or 761 of the Internal Revenue Code? (Answer "yes" or "no")—No.
- (g) Does this return involve an adjustment of the excess profits tax liability due to the application of the sections specified in (1) below? (Answer "yes" or "no")—No.
- (h) State amount of total assets as of the end of the taxable year. (From Form 1120, page 4, line 8, last column), \$2,143,244.03.

[fol. 106]

## Schedule A.—Excess Profits Net Income Computation

Line No.	Column 1 Income Credit Method	Column 2 Invested Capital Credit Method
1. Normal-tax net income (computed without allowance of credit for income subject to excess profits tax and without allowance of dividends received credit) (item 37, page 1, Form 1120).....	\$152,992.98	\$.....
7. Total of lines 1 to 6.....	\$152,992.98	\$.....
8. Net gain from sale or exchange of capital assets (item 12 (a), page 1, Form 1120).....	\$ 1,404.32	\$.....
13. (a) Dividends received credit adjustment (item 13, page 1, Form 1120, excluding dividends received from foreign corporations).....	2,885.00	X X X X X X
15. Total of lines 8 to 14.....	\$ 4,289.32	\$.....
16. Excess profits tax net income computed without regard to deductions applicable to life insurance companies (line 7 minus line 15).....	\$148,703.66	\$.....
18. Excess profits net income computed under income credit method or invested capital credit method (line 16; or line 16 minus line 17 in case of a life insurance company)...	\$148,703.66	\$.....



[fol. 107]

## Schedule B.—Excess Profits Credit—Based on Income

Page 3

Taxable Years beginning After December 31, 1935,  
and before January 1, 1940  
(If additional columns are required, attach  
separate schedule)

Line No.	1. Year Ended Dec. 31, 1936	2. Year Ended Dec. 31, 1937	3. Year Ended Dec. 31, 1938	4. Year Ended Dec. 31, 1939
1. Normal-tax (or special-Class) net income—Schedule attached.....	\$69,424.15	\$21,239.38	\$113,620.14	\$ 67,418.97
2. Net capital loss used in computing line 1.....	451.22	2,000.00	423.58	46.25
6. Total of lines 1 to 5.....	\$68,972.93	\$23,239.38	\$114,043.72	\$ 67,465.22
11. Difference between lines 6 and 10.....	\$68,972.93	\$23,239.38	\$114,043.72	\$ 67,465.22
14. Total of lines 11 to 13....	\$68,972.93	\$23,239.38	\$114,043.72	\$ 67,465.22
18. Normal-tax (or special-class) net income after applying section 711 (b) (2) (line 14 minus line 17).....	\$68,972.93	\$23,239.38	\$114,043.72	\$ 67,465.22
20. Dividends received credit....		2,635.43	3,011.89	3,405.95
26. Total of lines 18 to 25....	\$68,972.93	\$25,874.81	\$117,055.61	\$ 70,871.17
28. Dividends received from domestic corporations.....	1,250.00	3,100.50	3,543.40	4,007.00
30. Total of lines 27 to 29....	\$ 1,250.00	\$ 3,100.50	\$ 3,543.40	\$ 4,007.00
31. Excess profits net income (line 26 minus line 30).....	\$70,222.93	\$22,774.31	\$113,512.21	\$ 66,864.17
32. Net aggregate of columns 1, 2, 3, and 4.....				\$132,927.76
33. Increase in lowest year in base period (attach statement).....				121,010.60
34. Total of lines 32 and 33.....				\$253,938.36
35. Average base period net income—General average (line 34 divided by number of months in base period, multiplied by 12).....				\$ 63,484.59

[fol. 108]

36. Net aggregate of columns 3 and 4, line 31 (see instruction regarding limitation applicable to taxable year ending after May 31, 1940).....	\$180,376.38	
37. Net aggregate of columns 1 and 2, line 31.....	47,448.62	
38. Excess of line 36 over line 37.....	\$227,825.00	
39. One-half of line 38.....	113,912.50	
40. Line 36 plus line 39.....	\$294,288.88	
41. Line 40 divided by number of months in second half of base period, multiplied by 12.....	\$147,144.44	
42. Average base period net income—Increased earnings in last half of base period (line 41, or the highest excess profits net income for any taxable year in the base period, whichever is lesser) Year 1938.....		\$113,512.21
43. 95 percent of line 35 or line 42, whichever is greater.....		\$107,836.60
46. Excess profits credit—based on income (line 43 plus line 45, if a net capital addition) (or line 43 minus line 45, if a net capital reduction).....		\$107,836.60



[fol. 109]

Automobile Club of Michigan  
Detroit, Michigan

Statement Attached to  
1943 Corporation Excess Profits Tax Return

The attached 1943 Corporation Excess Profits Tax Return of Automobile Club of Michigan is filed under protest for the season that the Automobile Club of Michigan believes that it is exempt from income tax under Section 101-9 of the Internal Revenue Code.

Rulings of the Commissioner of Internal Revenue under dates of June 11, 1934, and July 5, 1938, specifically held that the Automobile Club of Michigan was exempt from the imposition of Federal taxes under the provisions of said Section of the Code. Said rulings likewise relieved the Automobile Club of Michigan of liability for filing Federal corporation income tax returns. A letter from Mr. Norman D. Cann, Deputy Commissioner of Internal Revenue, under date of July 16, 1945, purports to revoke the Bureau's rulings aforesaid and directs that the Automobile Club of Michigan file Federal returns for the calendar year 1943. The attached return is filed solely by reason of the receipt of the aforesaid letter and pursuant to its requirements.

The attached corporation excess profits tax return shows the excess profits net income and adjusted excess profits net income received by the Automobile Club of Michigan for the calendar year 1943 and the base period net income of the years 1936 to 1939, inclusive. It does not show any tax computation because the Automobile Club of Michigan deems that the aforesaid purported revocation is contrary to the provisions of the Internal Revenue Code applicable to the Automobile Club of Michigan. Consequently no tax is being paid herewith.

The attached 1943 return was not filed at the time required by law for the filing of 1943 corporation excess profits tax returns for the reason that on said date there was a ruling of the Commissioner of Internal Revenue in effect, holding that the Automobile Club of Michigan was exempt from taxation under Section 101-9 of the Internal Revenue Code. The attached corporation excess profits tax return is being filed pursuant to instructions, at as early a date following the receipt of the letter of Mr. Norman D. Cann above referred to as possible, since the preparation of this and other returns required by said letter required a substantial amount of time. Delay in filing this corporation excess profits tax return is due to the aforesaid cause and is not due to wilful negligence or intent to evade tax on the part of the Automobile Club of Michigan.

Automobile Club of Michigan  
By "John E. Brown"  
1st Vice President  
By "J. C. Sasser"  
Assistant Treasurer

Dated: October 17, 1945.

[fol. 110]

## EXHIBIT 15 TO STIPULATION OF FACTS

Form 1120  
Treasury Department  
Internal Revenue Service

United States  
Corporation Income and Declared Value  
Excess-Profits Tax Return  
For Calendar Year 1944

Automobile Club of Michigan  
139 Bagley Avenue  
Detroit 26, Michigan

Kind of business: Automobile Club

Normal-Tax Net Income Computation  
Gross Income

4. Gross receipts (where inventories are not an income-determining factor)....	\$2,154,137.70		
6. Gross profit where inventories are not an income-determining factor.....	\$2,154,137.70		
		Less:	
		Amortizable	
		Bond	
		Premium	
8. Interest on corporation bonds, etc.....	\$ 6,536.01	\$ 292.86	6,243.15
9. (a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of \$5,000 issued prior to March 1, 1941. (From Schedule M, line 15 (a) (2) (iii).....	8,625.00	1,056.22	7,568.78
(b) Interest on Treasury notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Submit schedule)	25,582.81	13.92	25,568.89
10. Rents.....			37,623.25
13. Dividends. (From Schedule E).....			2,560.00
14. Other income. (State nature) Schedule attached.....			62,776.09
15. Total income in items 3, and 6 to 14, inclusive.....			\$2,296,477.86

[fol. 111]

## Deductions

16.	Compensation of officers. (From Schedule F)	\$ 35,496.02	
17.	Salaries and wages (not deducted elsewhere)	577,533.56	
18.	Rent	78,132.15	
19.	Repairs	23,821.13	
22.	Taxes. (From Schedule H) (Deduct declared value excess-profits tax as item 35)	28,546.40	
23.	Contributions or gifts paid. (From Schedule I) \$15,700.00 limited to	12,200.53	
25.	Depreciation. (From Schedule J)	15,947.69	
29.	Other deductions authorized by law. (From Schedule K)	1,294,440.17	
30.	Total deductions in items 16 to 29, inclusive		2,066,117.65
31.	Net income for declared value excess-profits tax computation (item 15 minus item 30)	\$ 230,360.21	
32.	Add: Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (3) (ii) \$1,025.00. Less amortizable bond premiums, \$139.22		885.78
33.	Excess of net long-term capital gain over net short-term capital loss. (From Schedule C)		564.08
34.	Total of lines 31, 32, and 33	\$ 231,810.07	
35.	Less: Declared value excess-profits tax		—0—
36.	Net income	\$ 231,810.07	
37.	Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of lines 9 (a) and 32)		8,454.56
38.	Adjusted net income	\$ 223,355.51	
39.	Less: Adjusted excess profits net income from Form 1121. (See instruction on page 8)	\$102,394.83	
40.	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 38 minus item 39, above)	2,176.00	104,570.83
41.	Normal-tax net income	\$ 118,784.68	

## Total Income and Declared Value Excess-Profits Taxes

Exemption claimed as set forth in attached rider

46.	Total income and declared value excess-profits taxes due	\$	No tax
-----	--	----	--------



[fol. 112]

## Affidavit. (See Instruction E)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

"John E. Brown" 1st V. Pres.

"J. C. Sasser" Ass't. Treas.

(Corporate Seal)

Subscribed and sworn to before me this 18th day of October, 1945.

"Fred N. Rehm" Notary Public

Expires: Jan. 21, 1946

(Notarial Seal)

## Affidavit. (See Instruction E)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

M. M. Jensen

Ernst &amp; Ernst

Subscribed and sworn to before me this 18th day of October, 1945.

Esther L. Trout Notary Public

My commission expires May 28, 1946

(Notarial Seal)

Page 2

## Declared Value Excess-Profits Tax Computation.

(See Computation Instructions)

- |  |                |              |
|--|----------------|--------------|
| 1. Net income for declared value excess-profits tax computation (item 31, page 1).....   |                | \$230,360.21 |
| 2. Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1944 (or for year ended June 30, 1945, if your income tax fiscal year began in 1944 and ended on or after July 31, 1945)... | \$3,500,000.00 |              |
| 3. 10 percent of line 2.....   | \$ 350,000.00  |              |
| 4. Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 38 minus item 39, page 1).....   | 2,176.00       | 352,176.00   |
| 5. Balance subject to declared value excess-profits tax (line 1 minus total of lines 3 and 4).....   |                | None         |

[fol. 113]

## Schedule E.—Income From Dividends

Page 3

Schedule attached

## Schedule F.—Compensation of Officers

1. Name and Address of Officer	2. Official Title	3. Time Devoted to Business	6. Amount of Compensation
Richard Harfst	Asst. Sec.	All	\$22,999.92
J. C. Sasser	Asst. Treas.	All	12,496.10
Total compensation of officers. (Enter as item 16, page 1).....			\$35,496.02

Schedule H.—Taxes.  
(See Instruction 22)Schedule I.—Contributions or  
Gifts Paid. (See Instruction 23)

Nature	Amount	Name and Address of Organization	Amount
Pay roll taxes.....	\$15,476.98	War Chest of Metropolitan Detroit.....	\$ 5,000.00
Local property taxes.....	8,694.42	American Red Cross.....	10,700.00
Federal capital stock tax.....	4,375.00		
Total. (Enter as item 22, page 1).....	\$28,546.40	Total. (Enter as item 23, page 1; subject to 5 per- cent limitation.) (See In- struction 23).....	\$15,700.00

## Schedule J.—Depreciation. (See Instruction 25)

Schedule attached

## Schedule K.—Other Deductions. (See Instruction 29)

Schedule attached

## Questions

1. Date of incorporation—July 21, 1916.
2. State or country—Michigan.
3. State collector's office where the corporation's return for the preceding year was filed—None required.
4. The corporation's books are in care of J. C. Sasser. Located at 139 Bagley Ave., Detroit.
5. Number of places of business—34.
6. Did the corporation during the taxable year have any Government contracts or subcontracts? (Answer "yes" or "no"). No. If answer is "yes," state the approximate aggregate gross dollar amount billed during the taxable year under all such contracts and/or subcontracts. (See Instruction G-(3).)



[fol. 114]

7. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code? No. (If so, additional return on Form 1120 H must be filed.)
8. Is this a consolidated return? No. (If so, procure from the collector of internal revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return.)
9. If this is not a consolidated return: (a) did the corporation own at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign? No; or (b) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 50 percent or more of the corporation's voting stock? No. (If either answer is "yes" attach separate schedule showing: (1) Name and address; (2) percentage of stock owned; (3) date stock was acquired; and (4) the collector's office in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed.)
10. Is this return on the basis of cash receipts and disbursements? No. If not, describe fully in separate statement. Accrual.
11. Did the corporation at any time during its taxable year have in its employ more than eight individuals? (Answer "yes" or "no"). Yes. If answer is "yes," has the corporation in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate? (Answer "yes" or "no"). Yes. If answer to second question is "yes," attach statement as required by Instructions 16 and 17.
12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. No inventories. If other basis is used, explain fully in separate statement, giving date inventory was last reconciled with stock.
13. Did the corporation make a return of information on Forms 1096 and 1099 or Form W-2 (or Form W-2a) for the calendar year 1944 (see Instruction G-(1))? Yes.
14. Has any transaction described in Instruction G-(4) occurred on or after October 8, 1940? (Answer "yes" or "no"). No.
15. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? (Answer "yes" or "no"). No. (If answer is "yes," attach statement as required by Instruction W-(3).)

[fol. 115]

Page 4

## Schedule L.—Balance Sheets. (See Instruction L)

Assets	Beginning of Taxable Year Amount	Total	End of Taxable Year Amount	Total
Assets	Beginning of Taxable Year Amount	Total	End of Taxable Year Amount	Total
1. Cash.....		\$ 374,167.61		\$ 414,876.30
2. Notes and accounts receivable.	\$ 28,412.21		\$ 31,905.26	
Less: Reserve for bad debts.	1,000.00	27,412.21	1,000.00	30,905.26
3. Inventories (itemize in separate schedule).....		—0—		—0—
4. Investments in governmental obligations:				
(a) Obligations of a State, Ter- ritory, or political subdivi- sion thereof, or the District of Columbia, or United States possessions.....	\$ 56,563.28		\$ 56,424.06	
(b) Obligations of the United States:				
(2) United States savings bonds and Treasury bonds issued prior to March 1, 1941.....	335,864.53		300,508.31	
(3) Treasury notes issued on or after December 1, 1946; and all other ob- ligations of the United States issued on or after March 1, 1941...	983,524.65			
(c) Obligations of instrumen- talities of the United States:				
(3) Obligations of all in- strumentalities of the United States issued on or after March 1, 1941.		1,375,952.46	1,333,948.83	1,690,881.20
5. Other investments (itemize)...		277,932.45		248,808.67
6. Capital assets:				
(a) Depreciable assets (itemize in separate schedule).....	\$ 54,177.91		\$ 49,992.75	
Less: Reserve for deprecia- tion.....	12,091.19	42,086.72	13,999.25	35,993.50
(c) Land.....		28,522.61		64,429.64
7. Other assets (itemize).....		17,169.97		31,312.81
8. Total Assets.....		\$2,143,244.03		\$2,517,207.38

[fol. 116]

## Liabilities

9. Accounts payable.....	\$ 139,831.90	\$ 174,620.43
11. Accrued expenses (itemize).....	\$ 975,785.14	
	330.00	976,115.14
12. Other liabilities (itemize):		
Deferred dues.....	\$892,905.80	
Unearned advertising.....	1,275.48	894,181.28
13. Surplus reserves (itemize in separate schedule).....	63,000.00	66,000.00
16. Earned surplus and undivided profits.....	1,046,230.85	1,300,471.81
17. Total Liabilities.....	<u>\$2,143,244.03</u>	<u>\$2,517,207.38</u>



**Automobile Club of Michigan  
Detroit, Michigan**

**Statement Attached to 1944 Corporation Income and  
Declared Value Excess Profits Tax Return**

The attached 1944 Corporation Income and Declared Value Excess Profits Tax Return of Automobile Club of Michigan is filed under protest for the reason that the Automobile Club of Michigan believes that it is exempt from income tax under Section 101-9 of the Internal Revenue Code.

Rulings of the Commissioner of Internal Revenue under dates of June 11, 1934, and July 5, 1938, specifically held that the Automobile Club of Michigan was exempt from the imposition of Federal income taxes under the provisions of said Section of the Code. Said rulings likewise relieved the Automobile Club of Michigan of liability for filing Federal corporation income tax returns. A letter from Mr. Norman D. Cann, Deputy Commissioner of Internal Revenue, under date of July 16, 1945, purports to revoke the Bureau's rulings aforesaid and directs that the Automobile Club of Michigan file a Federal corporation income tax return for the calendar year 1944. The attached return is filed solely by reason of the receipt of the aforesaid letter and pursuant to its requirements.

The attached corporation income tax return shows items of gross income received by the Automobile Club of Michigan for the calendar year 1944 and deductions properly allowable and the amount of net income resulting. It does not show any tax computation because the Automobile Club of Michigan deems that the aforesaid purported revocation is contrary to the provisions of the Internal Revenue Code applicable to the Automobile Club of Michigan. Consequently no tax is being paid herewith.

The attached 1944 return was not filed at the time required by law for the filing of 1944 corporation income tax returns for the reason that on said date there was a ruling of the Commissioner of Internal Revenue in effect, holding that the Automobile Club of Michigan was exempt from taxation under Section 101-9 of the Internal Revenue Code. The attached corporation income tax return is being filed pursuant to instructions at as early a date following the receipt of the letter of Mr. Norman D. Cann above referred to as possible, since the preparation of this and other returns required by said letter re-[fol. 117] quired a substantial amount of time. Delay in filing this corporation income tax return is due to the aforesaid cause and is not due to wilful negligence or intent to evade tax on the part of the Automobile Club of Michigan.

Automobile Club of Michigan  
By "John E. Brown"  
1st Vice President  
By "J. C. Sasser"  
Assistant Treasurer

Dated: October 17, 1945



## EXHIBIT 16 TO STIPULATION OF FACTS

Page 1

Form 1121  
Treasury Department  
Internal Revenue Service

United States  
Corporation Excess Profits Tax Return  
For Calendar Year 1944

Automobile Club of Michigan  
139 Bagley Avenue  
Detroit 26, Michigan

## Excess Profits Tax Computation

Item and Instruction No.	Column 1 Income Credit Method	Column 2 Invested Capital Credit Method
1. Excess profits net income (line 18, Schedule A) .....	\$220,231.43	
2. Specific exemption .....	\$ 10,000	\$ 10,000
3. Excess profits credit—based on income (line 46, Schedule B) .....	107,836.60	x x x x x x
6. Total of items 2 to 5 .....	\$117,836.60	\$ .....
7. Difference between item 1 and item 6 .....	\$102,394.83	\$ .....
8. Adjusted excess profits net income (item 7, column 1, or item 7, col. 2, whichever is applicable) .....		\$102,394.83
20. Item 18 (c) minus item 19 .....		\$ .....
Exemption claimed as set forth in attached rider		
24. Excess profits tax due (item 22 plus item 23, or item 22 minus item 23, whichever is applicable) .....		\$ No Tax

[fol. 118]  
We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself, deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

"Jolin E. Brown" 1st V. Pres.  
"C. Sasser" Ass't. Treas.  
(Corporate Seal)

Subscribed and sworn to before me this 18th day of October, 1945.

"Fred N. Rehm" Notary Public  
Expires Jan. 21, 1946  
(Notarial Seal)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the excess profits tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

M. M. Jensen  
Ernst & Ernst

Subscribed and sworn to before me this 18th day of October, 1945.

Esther L. Trout Notary Public  
My commission expires May 28, 1946  
(Notarial Seal)

Page 2

## Questions

- (a) Date of incorporation—July 21, 1916. (b) State or country—Michigan.
- (c) Collector's office in which your income tax return for the taxable year was filed—Detroit.
- (d) Is this a consolidated return? No. If so, procure from the collector Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of the consolidated income tax return.
- (e) In computing the excess profits credit under the invested capital method, do you elect to include in excess profits net income interest received on, reduced by the amount of amortizable bond premium under section 125 attributable to, all Government obligations described in section 22(b)(4) of the Internal Revenue Code? (Answer "yes" or "no")—Yes.
- (f) Are you a transferor or transferee upon an exchange as defined by section 760 or 761 of the Internal Revenue Code? (Answer "yes" or "no")—No.
- (g) Does this return involve an adjustment of the excess profits tax liability due to the application of the sections specified in (1) below? (Answer "yes" or "no")—No.
- (h) State amount of total assets as of the end of the taxable year. (From Form 1120, page 4, line 8, last column), \$2,517,207.38.
- (i) Has a constructive average base period net income under section 722 been used in computing the excess profits credit used on this return? No.
- (j) Is any unused excess profits credit adjustment computed with the use of a constructive average base period net income? No.

[fol. 119]

## Schedule A.—Excess Profits Net Income Computation

Line No.	Column 1 Income Credit Method	Column 2 Invested Capital Credit Method
1. Normal-tax net income (computed without allowance of credit for income subject to excess profits tax and without allowance of dividends received credit) (item 38, page 1, Form 1120).....	\$223,355.51	\$.....
7. Total of lines 1 to 6.....	\$223,355.51	\$.....
8. Net gain from sale or exchange of capital assets (item 12 (a) plus item 33, page 1, Form 1120).....	\$ 564.08	\$.....
13. (a) Dividends received credit adjustment (item 13, page 1, Form 1120, excluding dividends received from foreign corporations).....	2,560.00	x x x x x x
15. Total of lines 8 to 14.....	\$ 3,124.08	\$.....
16. Excess profits tax net income computed without regard to deductions applicable to life insurance companies (line 7 minus line 15).....	\$220,231.43	\$.....
18. Excess profits net income computed under income credit method or invested capital credit method (line 16, or line 16 minus line 17 in case of a life insurance company)...	\$220,231.43	\$.....

[fol. 120]

## Schedule B.—Excess Profits Credit—Based on Income.

Page 3

Taxable Years beginning after December 31, 1935,  
and before January 1, 1940(If additional columns are required, attach  
separate schedule)

Line No.	1. Year Ended Dec. 31, 1936	2. Year Ended Dec. 31, 1937	3. Year Ended Dec. 31, 1938	4. Year Ended Dec. 31, 1939
1. Normal-tax (or special-class) net income—Schedule attached.....	\$69,424.15	\$21,239.38	\$113,620.14	\$ 67,418.97
2. Net capital loss used in computing line 1.....	451.22	2,000.00	423.58	46.25
6. Total of lines 1 to 5.....	\$68,972.93	\$23,239.38	\$114,043.72	\$ 67,465.22
11. Difference between lines 6 and 10.....	\$68,972.93	\$23,239.38	\$114,043.72	\$ 67,465.22
14. Total of lines 11 to 13.....	\$68,972.93	\$23,239.38	\$114,043.72	\$ 67,465.22
18. Normal-tax (or special-class) net income after applying section 711 (b) (2) (line 14 minus line 17)...	\$68,972.93	\$23,239.38	\$114,043.72	\$ 67,465.22
20. Dividends received credit.....		2,635.43	3,011.89	3,405.95
26. Total of lines 18 to 25.....	\$68,972.93	\$25,874.81	\$117,055.61	\$ 70,871.17
28. Dividends received from domestic corporations.....	\$ 1,250.00	\$ 3,100.50	\$ 3,543.40	\$ 4,007.00
30. Total of lines 27 to 29.....	\$ 1,250.00	\$ 3,100.50	\$ 3,543.40	\$ 4,007.00
31. Excess profits net income (line 26 minus line 30).....	\$70,222.93	\$22,774.31	\$113,512.21	\$ 66,864.17
32. Net aggregate of columns 1, 2, 3, and 4.....				\$132,927.76
33. Increase in lowest year in base period (attach statement).....				121,010.60
34. Total of lines 32 and 33.....				\$253,938.36
35. Average base period net income—General average (line 34 divided by number of months in base period, multiplied by 12).....				\$ 63,484.59
36. Net aggregate of columns 3 and 4, line 31 (see instruction regarding limitation applicable to taxable year ending after May 31, 1940).....			\$180,376.38	
37. Net aggregate of columns 1 and 2, line 31.....			47,448.62	

[fol. 121]



38. Excess of line 36 over line 37.....	\$227,825.00
39. One-half of line 38.....	113,912.50
40. Line 36 plus line 39.....	<u>\$294,288.88</u>
41. Line 40 divided by number of months in second half of base period, multiplied by 12.....	<u>\$147,144.44</u>
42. Average base period net income—Increased earnings in last half of base period (line 41, or the highest excess profits net income for any taxable year in the base period, whichever is lesser) Year 1938.....	<u>\$113,512.21</u>
43. 95 percent of line 35 or line 42, whichever is greater.....	<u>\$190,836.60</u>
46. Excess profits credit—based on income (line 43 plus line 45, if a net capital addition) (or line 43 minus line 45, if a net capital reduction)....	\$107,836.60

Note: Figures in italics appear in red on original.

Automobile Club of Michigan  
Detroit, Michigan

Statement Attached To  
1944 Corporation Excess Profits Tax Return

The attached 1944 Corporation Excess Profits Tax Return of Automobile Club of Michigan is filed under protest for the reason that the Automobile Club of Michigan believes that it is exempt from income tax under Section 101-9 of the Internal Revenue Code.

Rulings of the Commissioner of Internal Revenue under dates of June 11, 1934, and July 5, 1938, specifically held that the Automobile Club of Michigan was exempt from the imposition of Federal taxes under the provisions of said Section of the Code. Said rulings likewise relieved the Automobile Club of Michigan of liability for filing Federal corporation income tax returns. A letter from Mr. Norman D. Cann, Deputy Commissioner of Internal Revenue, under date of July 16, 1945, purports to revoke the Bureau's rulings aforesaid and directs that the Automobile Club of Michigan file Federal returns for the calendar year 1944. The attached return is filed solely by reason of the receipt of the aforesaid letter and pursuant to its requirements.

The attached corporation excess profits tax return shows the excess profits net income and adjusted excess profits net income received by the Automobile Club of Michigan for the calendar year 1944 and the base period net income of the years 1936 to 1939, inclusive. It does not show any tax computation because the Automobile Club of Michigan [fol. 122] deems that the aforesaid purported revocation is contrary to the provisions of the Internal Revenue Code applicable to the Automobile Club of Michigan. Consequently no tax is being paid herewith.

The attached 1944 return was not filed at the time required by law for the filing of 1944 corporation excess profits tax returns for the reason that on said date there was a ruling of the Commissioner of Internal Revenue in effect, holding that the Automobile Club of Michigan was exempt from taxation under Section 101-9 of the Internal Revenue Code. The attached corporation excess profits tax return is being filed pursuant to instructions, at as early a date following the receipt of the letter of Mr. Norman D. Cann above referred to as possible, since the preparation of this and other returns required by said letter required a substantial amount of time. Delay in filing this corporation excess profits tax return is due to the aforesaid cause and is not due to wilful negligence or intent to evade tax on the part of the Automobile Club of Michigan.

Automobile Club of Michigan  
By "John E. Brown"  
1st Vice President  
By "J. C. Sasser"  
Assistant Treasurer

Dated: October 17, 1945



[fol. 123] **Exhibit 21 to Stipulation of Facts—  
Filed August 12, 1944**

August 11, 1944

Collector of Internal Revenue,  
Detroit, Michigan

Gentlemen:

We enclose Information Return for the year 1943—  
Treasury Form 990, required under Section 54 (f) of the  
Internal Revenue Code as added by Section 117 of the  
Revenue Act of 1943.

The following supporting schedules are attached:

Balance Sheet of Dec. 31, 1943.

Statement of Income for the year 1943.

Copy of Articles of Association.

Copy of By-Laws with latest amendments.

Very truly yours,

Assistant Treasurer.

[fol. 124] Form 990

Treasury Department  
Internal Revenue Service

(Revised May 1944)

United States

Annual Return of Organization Exempt from Income Tax  
Under Section 101 of the Internal Revenue Code, or Under

Corresponding Provisions of Prior Revenue Acts

*(Required under Section 54(f) of the Internal Revenue  
Code, as added by Section 117 of the Revenue Act of 1943<sup>1</sup>)*

For Calendar Year 1943

Automobile Club of Michigan  
139 Bagley Avenue  
Detroit, Wayne County, Michigan

Have you been advised by Bureau letter of your exemp-  
tion? Yes. If "Yes" state date of letter July 5, 1938.

If "No" application for exemption must accompany this return. Consult collector for your district for information.

State nature of your activities—Automobile club services.

Subsection of section 101 under which you are exempt—9.

This return must be filed on or before the 15th day of the 5th month following the close of the annual accounting period. Return must be filed with the Collector of Internal Revenue for the district in which is located the principal place of business or principal office of the organization.

[fol. 125] 1. Have you engaged in any activities which have not previously been reported to the Bureau? No. If so, attach detailed statement.

2. Have any changes not previously reported to the Bureau been made in your articles of incorporation or bylaws or other instruments of similar import? Yes. If so, attach a copy of the amendments.

3. State the names and addresses of the officers or other persons having care of the books of account, minutes, cor-

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<sup>1</sup> The filing of a return is not required of any organization exempt from taxation under the provisions of section 101 which is a (1) religious organization exempt under section 101 (6); (2) educational organization exempt under section 101 (6), if it normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; (3) charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under section 101 (6), if supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or primarily supported by contributions of the general public; (4) organization exempt under section 101 (6), if operated, supervised or controlled by or in connection with a religious organization exempt under section 101 (6); (5) fraternal beneficiary society, order, or association solely exempt under section 101 (3); or (6) corporation exempt under section 101 (15), if wholly owned by the United States or any agency or instrumentality thereof, or a wholly owned subsidiary of such corporation.

response, and other documents and records of the organization.

Dr. James W. Inches, President, St. Clair, Michigan.

Mr. John A. Brown, Vice President, 228 W. Congress, Detroit, Mich.

Mr. J. Lee Barrett, Treasurer, 1005 Stroh Bldg., Detroit, Mich.

Mr. Richard Harfst, General Manager, 1683 Longfellow, Detroit, Mich.

Mr. J. C. Sasser, Assistant Treasurer, 81 Oakdale, Pleasant Ridge, Mich.

Mr. W. F. Arndt, Auditor, 11406 Coyle, Detroit, Mich.

6. Fill in the items on the reverse side of this form, to the extent that they apply to your organization.

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer of the organization for or by which this return is made, each for himself declares under the penalties of perjury that the return has been examined by him and is to the best of his knowledge and belief a true, correct and complete return.

(S) John E. Brown, 1st V. Pres.

(Date) 8/7/44

(S) J. C. Sasser, Assistant Treasurer

(Date) 8/7/44

[Corporate Seal]

The following additional declaration shall be executed by the person other than an officer or employee of the organization actually preparing this return.

[fol. 126] I declare under the penalties of perjury that I prepared this return for the organization(s) named herein and that this return is to the best of my knowledge and belief a true, correct, and complete return.



*Gross Income and Receipts**Item No.*

*1. Receipts from members:		
(a) Dues .....		\$1,993,695.13
4. Dividends and interest .....		<del>23</del> ,531.75
†6. Gross receipts from business activities (state nature):		
(a) Motor News Advertising .....	\$47,829.50	47,829.50
*7. Other gross income and receipts (Miscellaneous) .....		3,619.30
8. Total gross income and receipts (total of items 1 to 7, inclusive) .....		\$2,081,675.68

\* In all cases where the total of either Items 1, 2, 3, or 7 includes money or property amounting to \$3,000 or more, or to 10 percent or more of Item 8, which was received directly or indirectly from one person, in one or more transactions during the year, itemized schedules showing the total amount received from and the name and address of each such person shall be attached to this return. (The term "person" includes individuals, fiduciaries, partnerships, corporations, associations, and other organizations.) Receipts by a "central" organization from organizations included in a group return need not be itemized in the "central" organization's separate return.

† If any amounts are reported in Items 5 or 6, a classified balance sheet of the organization(s) receiving such amounts, showing the entire assets and liabilities as of the end of the accounting period, should be attached.

A group return on this form may be filed by a central, parent, or like organization for two or more of its chartered, affiliated, or associated local organizations which (a) are subject to its general supervision and examination, (b) are exempt from tax under the same provision of revenue law as the central organization, (c) have authorized it in writing to include them in such return, and (d) have filed with it statements, verified under oath or affirmation, of the information required to be included in this return. Such group return shall be in addition to the separate return of the central organization, but in lieu of separate returns by the



[fol. 127]

*Disbursements, Etc.*

10. Dues, assessments, per capita taxes, etc., paid to affiliated organizations AAA Dues	52,969.25
12. Wages, salaries, and commissions (other than compensation paid to officers, directors, trustees, etc.)	755,476.60
15. Taxes (such as property, income, social security, unemployment taxes, etc.)	24,834.24
16. Other operating, administrative, and overhead expenses	1,062,108.58
17. Grants, gifts, contributions, etc., paid (state nature):	
(a) American Red Cross	\$5,000.00
(b) Community War Chest	5,600.00
(c) Employees in armed services	1,100.00
	<u>11,700.00</u>
21. Total disbursements, etc. (total of items 9 to 20, inclusive)	\$1,907,688.67

*Automobile Club of Michigan**Statement of Income 1943*

Memberships	1,993,695.13
Motor News Advertising	47,829.50
Interest earned on investment securities	33,646.75
On claim against closed banks	774.15
Dividends received	2,885.00
Gain on disposal of investment securities	1,404.32
Unclassified	1,379.78
Sales of Maps & Guides	61.05
Total	<u>2,081,675.68</u>

local organizations included in the group return. There shall be attached to such group return a schedule showing separately (a) the total number, names and addresses of the local organizations included, and (b) the same information for those not included therein. For further information see regulations under sections 54(f) and 101 of the Internal Revenue Code.

[fol. 128]

**Balance Sheet**  
**Automobile Club of Michigan**  
**December 31, 1943**

*Assets*

Cash		\$ 374,167.61
Accounts Receivable:		
Motor News, less reserve of \$1,000.00	\$ 2,176.25	
Detroit Automobile Inter-Insurance Exchange, and Miscellaneous	25,235.96	27,412.21
<i>Other Assets</i>		
Investment securities, less reserve of \$13,000.00 to reduce to quoted market prices	\$1,640,884.91	
Accrued interest, claims against closed banks, and travel advances	9,040.34	1,649,925.25
Property and Equipment		70,609.33
Deferred Charges		8,129.63
		<u>\$2,130,244.03</u>

*Liabilities*

Accounts payable:		
For expenses	111,454.83	
Salaries and commissions	19,913.48	
Payroll taxes	7,229.02	
Miscellaneous	1,234.57	139,831.90
Deferred Income		894,181.28
Reserve for Post-War Personnel Adjustments		50,000.00
Operating Fund Reserve		1,046,230.85
		<u>\$2,130,244.03</u>

[fol. 129]

May 15, 1945

Collector of Internal Revenue  
 Detroit, Michigan

Gentlemen:

We enclose annual return of organization exempt from income tax under section 101 of the Internal Revenue Code. (Form 990 for the calendar year 1944)

We also enclose a copy of our balance sheet as of December 31, 1944 and analysis of item 7 in the statement of income and disbursements.

• Very truly yours,

Assistant Treasurer

cc—Mr. Howard Brown

[fol. 130] Form 990

**TREASURY DEPARTMENT**  
**Internal Revenue Service**

(Revised May 1944)

United States

**Annual Return of Organization Exempt from Income Tax**

**Under Section 101 of the Internal Revenue Code, or Under  
Corresponding Provisions of Prior Revenue Acts**

*(Required under Section 54(f) of the Internal Revenue  
Code, as added by Section 117 of the Revenue Act of 1943<sup>1</sup>)*

**For Calendar Year 1944**

**Automobile Club of Michigan**  
**139 Bagley Avenue**  
**Detroit 26, Michigan**

<sup>1</sup> The filing of a return is not required of any organization exempt from taxation under the provisions of section 101 which is a (1) religious organization exempt under section 101 (6); (2) educational organization exempt under section 101 (6), if it normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; (3) charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under section 101 (6), if supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or primarily supported by contributions of the general public; (4) organization exempt under section 101 (6), if operated, supervised or controlled by or in connection with a religious organization exempt under section 101 (6); (5) fraternal beneficiary society, order, or association solely exempt under section 101 (3); or (6) corporation exempt under section 101 (15); if wholly owned by the United States or any agency or instrumentality thereof, or a wholly owned subsidiary of such corporation.

Have you been advised by Bureau letter of your exemption? Yes. If "Yes" state date of letter July 9, 1939. If "No," application for exemption must accompany this return. Consult collector for your district for information.

State nature of your activities—Automobile Club Services  
Subsection of section 101 under which you are exempt—9

This return must be filed on or before the 15th day of the 5th month following the close of the annual accounting period. Return must be filed with the Collector of Internal Revenue for the district in which is located the principal place of business or principal office of the organization.

[fol. 131] 1. Have you engaged in any activities which have not previously been reported to the Bureau? No. If so, attach detailed statement.

2. Have any changes not previously reported to the Bureau been made in your articles of incorporation or bylaws or other instruments of similar import? No. If so, attach a copy of the amendments.

3. State the names and addresses of the officers or other persons having care of the books of account, minutes, correspondence, and other documents and records of the organization.

Richard Harfst, General Manager, 139 Bagley Avenue, Detroit 26, Mich.

J. C. Sasser, Ass't. Treas., 139 Bagley Avenue, Detroit 26, Mich.

4. Check whether this return was prepared on the cash ( ) or accrual basis (x).

5. This form shall be prepared in accordance with the method of accounting regularly employed in keeping the books of your organization.

6. Fill in the items on the reverse side of this form, to the extent that they apply to your organization.

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the organization for or by which this return is made, each for himself declares under the penalties of perjury that this return has been



examined by him and is to the best of his knowledge and belief a true, correct, and complete return.

John E. Brown, 1st Vice Pres.

(Date) 5/11/45

J. C. Sasser, Asst. Treas.

(Date) 5/11/45

[Corporate Seal]

[fol. 132] The following additional declaration shall be executed by the person other than an officer or employee of the organization actually preparing this return:

I declare under the penalties of perjury that I prepared this return for the organization(s) named herein and that this return is to the best of my knowledge and belief a true, correct, and complete return.

Automobile Club of Michigan  
W. F. Arndt

(Date) 5/11/45

[fol. 133]

*Gross Income and Receipts*

Item No.

*1. Receipts from members:	
(a) Dues .....	\$2,154,137.70
4. Dividends and interest .....	42,989.10
†5. Rents .....	640.00
*7. Other gross income and receipts .....	61,198.83
8. Total gross income and receipts (total of items 1 to 7 inclusive) .....	<u>\$2,258,965.63</u>

\* In all cases where the total of either Items 1, 2, 3, or 7 includes money or property amounting to \$3,000 or more, or to 10 percent or more of Item 8, which was received directly or indirectly from one person, in one or more transactions during the year, itemized schedules showing the total amount received from and the name and address of each such person shall be attached to this return. (The term "person" includes individuals, fiduciaries, partnerships, corporations, associations, and other organizations.) Receipts by a "central" organization from organizations included in a group

[fol. 134]

*Disbursements, Etc.*

10.	Dues, assessments, per capita taxes, etc., paid to affiliated organizations	55,776.00
12.	Wages, salaries, and commissions (other than compensation paid to officers, directors, trustees, etc.)	748,805.35
15.	Taxes (such as property, income, social security, unemployment taxes, etc.)	118,024.14
16.	Other operating, administrative, and overhead expenses	1,164,723.28
20.	Other disbursements or charges (state nature):	
	(a) Property and Equipment	\$35,607.03
		35,607.03
21	Total disbursements, etc. (total of items 9 to 20, inclusive)	\$2,122,935.80

Automobile Club of Michigan  
1944

Item Number VN

The Crest Co., 5756 Cass Ave., Detroit, Mich.	\$3,030.00
Detroit Auto Inter-Insurance Exchange, 139 Bagley Ave., Detroit, Mich.	3,540.00
R. M. Meisel, Industrial Bank Bldg., Detroit, Mich.	3,540.00
McCann Ericksen Inc., 285 Madison St., New York, N. Y.	4,260.00

return need not be itemized in the "central" organization's separate return.

† If any amounts are reported in Items 5 or 6, a classified balance sheet of the organization(s) receiving such amounts, showing the entire assets and liabilities as of the end of the accounting period, should be attached.

A group return on this form may be filed by a central, parent, or like organization for two or more of its chartered, affiliated, or associated local organizations which (a) are subject to its general supervision and examination, (b) are exempt from tax under the same provision of revenue law as the central organization, (c) have authorized it in writing to include them in such return, and (d) have filed with it statements, verified under oath or affirmation, of the information required to be included in this return. Such group return shall be in addition to the separate return of the central organization, but in lieu of separate returns by the local organizations included in the group return. There shall be attached to such group return a schedule showing separately (a) the total number, names and addresses of the local organizations included, and (b) the same information for those not included therein. For further information see regulations under sections 54(f) and 101 of the Internal Revenue Code.

## Item Number XVI

Various adjustments are made through-out the year by reason of joint occupancy and use of premises and facilities, and other adjustments resulting from the sharing of costs and services, which adjustments amounted to \$424,751.99 which if considered, result in a net other operating, administrative, and overhead expenses paid of \$1,164,723.28.

[fol. 135]

## Balance Sheet

Automobile Club of Michigan  
December 31, 1944*Assets*

Cash .....		414,876.30
Accounts Receivable:		
Motor News, less reserve of \$1,000.00 .....	2,003.50	
Detroit Automobile Inter-Ins. Exchange and Miscellaneous .....	28,901.76	30,905.26
<i>Other Assets</i>		
Investment securities, less reserve of \$13,000.00 to reduce to quoted market prices .....	1,920,689.87	
Accrued interest, claims against closed banks, and travel advances .....	9,501.85	1,930,191.72
Property and Equipment .....		100,423.14
Deferred Charges .....		21,810.96
		<u>2,498,207.38</u>

*Liabilities*

Accounts payable:		
For expenses .....	160,578.99	
Salaries and commissions .....	5,022.95	
Payroll Taxes .....	7,320.17	
Miscellaneous .....	1,698.32	174,620.43
Deferred Income .....		976,115.14
Reserve for Post-War Personnel Adjustments .....		47,000.00
Operating Fund Reserve .....		1,300,471.81
		<u>2,498,207.38</u>

(Petitioner's Exhibits 23 and 24 were introduced at Hearing.)

[Vol. 136]

BEFORE THE TAX COURT OF THE  
UNITED STATES

## EXHIBIT 23

## EXHIBIT D

ANALYSIS OF DEFERMENT OF INCOME FROM MEMBERSHIP DUES COLLECTED—PER BOOKS  
AUTOMBOLE CLUB OF MICHIGAN

	Year Ended December 31-1943		Year Ended December 31-1944		Year Ended December 31-1945		Year Ended December 31-1946		Year Ended December 31-1947	
Beginning of year:										
Balance—Deferred income account.....	\$ 753,229.15		\$ 888,924.50		\$ 972,917.41		\$1,049,902.85		\$1,194,683.05	
Balance—Collections on memberships issued on a deferred payment basis account.....	6,934.28	\$760,163.43	3,981.30	\$892,905.80	2,867.73	\$ 975,785.14	3,081.10	\$1,052,983.95	4,219.92	\$1,198,902.97
Cash collected on membership dues during the year.....	\$2,146,069.56		\$2,256,745.58		\$2,454,580.01		\$2,772,768.07		\$2,944,825.78	
Less refunds due to cancellations, duplicate payments, etc.....	19,632.06		19,728.54		24,036.04		27,870.42		30,797.02	
Net cash collected on membership dues during the year.....	\$2,126,437.50		\$2,237,017.04		\$2,430,543.97		\$2,744,897.65		\$2,914,028.76	
Portion of membership dues earned during the year.....	1,993,695.13		2,154,137.70		2,353,345.16		2,598,978.63		2,849,504.94	
Excess of net cash collected on membership dues during the year over the portion of membership dues earned during the year.....		132,742.37		82,879.34		77,198.81		145,919.02		64,523.82
End of year:										
Balance—Deferred income account.....	\$ 888,924.50		\$ 972,917.41		\$1,049,902.85		\$1,194,683.05		\$1,263,426.79	
Balance—Collections on memberships issued on a deferred payment basis account.....	3,981.30	\$892,905.80	2,867.73	\$975,785.14	3,081.10	\$1,052,983.95	4,219.92	\$1,198,902.97	—0—	\$1,263,426.79



[fol. 137]

BEFORE THE TAX COURT OF THE  
UNITED STATES

## EXHIBIT 24

## Balance Sheet

## Automobile Club of Michigan

June 30-1945

## Assets

Cash .....	\$ 313,336.48
Accounts receivable, less reserve of \$1,000.00	23,691.45
Cash on deposit—reserved for the purchase of investment securities.....	8,456.89
United States Savings bonds.....	491,847.90
Other United States Government securities	1,349,599.18
Municipal bonds .....	56,354.46
Public Utility bonds.....	162,980.11
Domestic corporation bonds.....	17,960.62
Domestic corporation stocks.....	—0—
Reserve to reduce securities to approximate aggregate quoted-market prices.....	(10,000.00)
Accrued interest on bonds.....	8,718.50
Miscellaneous accounts and deposits.....	2,222.50
Land .....	64,429.64
Buildings .....	35,554.66
Automobiles and trucks.....	15,307.48
Reserves for depreciation.....	(16,518.59)
Deferred charges:	
Premium of pension trust fund for em- ployees .....	23,329.03
Maps and supplies .....	—0—
Taxes, insurance, and rent.....	4,882.37

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\$2,552,152.68

[fol. 138]

## Liabilities

Accounts payable .....	\$ 140,241.75
Deferred income:	
Unearned membership dues .....	1,009,069.50
Collections on memberships issued on a deferred payment basis.....	3,949.57
Reserve for post-war personnel adjustment	47,000.00
Operating fund reserve:	
Balance at January 1, 1945.....	1,300,471.81
Adjustment to surplus reserve.....	9,000.00
Net income for the period from January 1, 1945, to June 30, 1945.....	42,420.05
	<hr/>
	\$2,552,152.68

The operating fund reserve at January 1, 1945, reflects a net charge of \$1,786.61 in connection with the acquisition of other clubs prior to January 1, 1943.

[fols. 139-140] BEFORE THE TAX COURT OF THE  
UNITED STATES

RESPONDENT'S EXHIBIT C

Form 872

Duplicate

U. S. Treasury Department  
Internal Revenue Service

(Revised June 1947)

Consent Fixing Period of Limitation Upon  
Assessment of Income and Profits Tax

C-TS:CenD  
JFG:MEN

August 23, 1948

In pursuance of the provisions of existing Internal Revenue Laws Automobile Club of Michigan, a taxpayer (or taxpayers) of 139 Bagley Avenue, Detroit 26, Michigan, and

the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or

on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1943, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1949, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

..... Taxpayer.<sup>1</sup>

Automobile Club of Michigan

Taxpayer.<sup>1</sup>

By (Signed) J. G. Vincent, President

(Signed) J. C. Sasser, Assistant Treasurer

(Signed) Geo. J. Schoeneman

Commissioner of Internal Revenue.

By A. D. K.

August 25, 1948

(Date)

[Seal<sup>2</sup>]

<sup>1</sup> This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduci-

[fols. 141-142] Form 872

Duplicate

U. S. Treasury Department  
Internal Revenue Service

(Revised May 1948)

Consent Fixing Period of Limitation Upon  
Assessment of Income and Profits Tax

C-TS:NCD

JFG:MEN

19..

In pursuance of the provisions of existing Internal Revenue Laws Automobile Club of Michigan, a taxpayer (or taxpayers) of 139 Bagley Avenue, Detroit 26, Michigan, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1943, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1950, except that, if a notice of a

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any capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the Commissioner of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

<sup>2</sup> If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.



deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

.....  
Taxpayer.<sup>1</sup>

Automobile Club of Michigan

Taxpayer.<sup>1</sup>

By (Signed) J. Lee Barrett, Treasurer

(Signed) Geo. J. Schoeneman

Commissioner of Internal Revenue.

By A. D. K.

May 23, 1949

(Date)

[Seal<sup>2</sup>]

<sup>1</sup> This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

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If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the Commissioner of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

<sup>2</sup> If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which

[fols. 143-144] BEFORE THE TAX COURT OF THE  
UNITED STATES

RESPONDENT'S EXHIBIT D

Form 872

Duplicate

U. S. Treasury Department  
Internal Revenue Service

(Revised June 1947)

Consent Fixing Period of Limitation Upon  
Assessment of Income and Profits Tax

C-TS:CenD  
JFG:MEN

August 23, 1948

In pursuance of the provisions of existing Internal Revenue Laws Automobile Club of Michigan, a taxpayer (or taxpayers) of 139 Bagley Avenue, Detroit 26, Michigan, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1944, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1949, except that, if a notice of deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the

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the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

Commissioner is prohibited from making an assessment and for sixty days thereafter.

.....  
Automobile Club of Michigan

Taxpayer.<sup>1</sup>

Taxpayer.<sup>1</sup>

By (Signed) J. G. Vincent, President

(Signed) J. C. Sasser, Assistant Treasurer

(Signed) Geo. J. Schoeneman

Commissioner of Internal Revenue.

By A. D. K.

August 25, 1948

(Date)

[Seal<sup>2</sup>]

<sup>1</sup> This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

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If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the Commissioner of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

<sup>2</sup> If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation

[fols. 145-146] Form 872

Duplicate

U. S. Treasury Department  
Internal Revenue Service

(Revised May 1948)

Consent Fixing Period of Limitation Upon  
Assessment of Income and Profits Tax

C-TS:NCD

JFG:MEN

..... 19..

In pursuance of the provisions of existing Internal Revenue Laws Automobile Club of Michigan, a taxpayer (or taxpayers) of 139 Bagley Avenue, Detroit 26, Michigan, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1944, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1950, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the

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as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.



Commissioner is prohibited from making an assessment and for sixty days thereafter.

.....  
Automobile Club of Michigan

Taxpayer.<sup>1</sup>

Taxpayer.<sup>1</sup>

By (Signed) J. Lee Barrett, Treasurer

(Signed) Geo. J. Schoeneman

Commissioner of Internal Revenue.

By A. D. K.

May 23, 1949

(Date)

[Seal<sup>2</sup>]

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[fol. 147] BEFORE THE TAX COURT OF THE UNITED STATES

**Transcript of Testimony**

Court Room No. 859,  
Federal Building,  
Detroit, Michigan,

September 16, 1952—10:00 a.m.

(Met, pursuant to notice.)

Before: Honorable Graydon G. Withey, Judge.

APPEARANCES: Raymond H. Berry, Esq., 1000 Penobscot Building, Detroit 26, Michigan, A. H. Moorman, Jr., 1708 Industrial Bank Building, Detroit 26, Michigan, appearing for the Petitioner; A. J. Friedman, Esq., Charles S. Gray, Esq., (Honorable Charles W. Davis, Chief Counsel, Bureau of Internal Revenue), appearing for the Respondent.

• • • • •  
**COLLOQUY BETWEEN COURT AND COUNSEL**

**Mr. Berry:**

• • • • •  
Now the Automobile Club of Michigan has been exempt from income tax by two specific rulings of the Commissioner of Internal Revenue; the first of which was dated June 11, 1934, exempting the Club from tax under Section 102 of the Revenue Act of 1932, and again on July 5, 1938, under Section 109 of the Revenue Act of '96." I might state—

The Court: What was the last Revenue Act?

Mr. Berry: Section 109, Revenue Act of 1936.

The Court: You said '96. I wondered. You said '96. I wondered if you meant 1896.

Mr. Berry: No, 1936. If I mis-spoke myself, I am sorry. Now, prior to July 16th, 1945, the Club was exempt from income tax for all the years, and on July 16, 1945, the Commissioner, in a letter directed to the Petitioner, revoked his ruling of June 11, 1934 and July 5, 1938, the

two previous exemption letters, and instructed the Petitioner to file corporation income and excess profits tax returns for the period beginning January 1, 1943. Subsequently these returns were filed and filed under protest.

[fol. 148] Now, it is the Petitioner's position that the Commissioner on July 16, 1945, was without authority in law to attempt to revoke the exemptions theretofore granted to Petitioner retroactive to January 1, 1943. We will not contend as our Petition alleges, that the Petitioner is not subject to tax for the period subsequent to the revocation of its exemption letters, to-wit July 16, 1945. We will admit that for the period subsequent to July 16, 1945, that we are taxable. We contend that the Commissioner acted arbitrarily and without authority in revoking our letters of exemption by his letter of July 16, 1945, and determining a deficiency in tax for any period prior thereto.

We have another legal point involving the statute of limitations. The Petitioner contends that Respondent is barred from asserting any tax for the years 1943 and 1944 because of the running of the statute of limitations against those years. Petitioner filed Form 990, in compliance with regulations of the Commissioner, for each of those years, that is in 1943 and 1944, as required by Section 54 (f) of the Internal Revenue Code. Petitioner further contends that those returns were returns for the purpose of starting the running of the statute of limitations under Section 275 of the Code. Now as a matter of fact Form 990 was filed for all the years involved and for years prior thereto.

I failed to state that we have by stipulation agreed upon many facts and points involved as matters involved in this proceeding, and that later the stipulation will be offered into evidence. These forms 990 for the years 1943 and 1944 are part of the stipulation.

Petitioner also contends that—well, it is apparent that Petitioner will become taxable for the first time on January 1, 1943, or later depending upon the decision of this Court. The question arises as to what is the proper basis for computing the deduction for depreciation on Petitioner's property beginning with the date Petitioner becomes taxable. It is our position that for such years it may be taxable and entitled to depreciation deductions on the

basis of the unadjusted cost of property in its possession at the date when it attains taxable status. We cite as ample authority, the published ruling of the Commissioner, GCM [fol. 149] 40857 for that position. We contend, the Respondent contends that Petitioner is only entitled to deduction of depreciation on the basis of cost less depreciation.

The Court: To make your position clear, will you be a little bit more specific with respect to what you mean by unadjusted cost?

Mr. Berry: I might state that it has been the policy of the taxpayer as it acquired furniture, fixtures, office equipment and other forms of personal property, to charge off the cost of those properties as acquired. In other words, they acquire a desk in 1938 or 1940 or at some other period of time, then they would immediately expense that out. It made no difference to them because there wasn't any tax involved and they considered that for conservative bookkeeping and their own financial statements that was the proper way to do it.

Now, in the alternative, we contend that the depreciated basis is the original cost unadjusted. It is recognized that the Court may determine that the proper basis of depreciation is the fair market value of the date the Petitioner became taxable. Now, this is an analogy to the situation we find taxpayers found themselves in on March 1, 1913. Bear in mind heretofore the Petitioner was exempt from tax. Now we come into a period of taxable status whenever the Court may find that to be, or if you agree with us that it is not until after July 16, 1945, then the question is raised as to whether or not we are entitled to use the fair market value for depreciation.

For the period here involved, well Petitioner received by far its greater amount of revenue from the dues of its members. For the period here involved these dues were at the rate of \$10.00 except from October 1, 1946, when it was raised to \$12.00. Now these dues are paid in advance and entitled the member to all the services offered by the Club for a period of twelve months thereafter. These dues are not collected on a calendar year basis. For instance, a person may join the Club in December. We contend he is entitled to twelve months' service for his \$10.00



or \$12.00 as the case may be, under it for the year that is applicable. Now Petitioner has regularly treated these [fol. 150] dues as unearned income at the time received, has taken them into account and prorated over the twelve months' period, so it is he in effect purchased his membership. It is our position that this is the proper method of accounting and best reflects the income of the Petitioner.

Petitioner contends that the Commissioner is without authority to change the method of accounting or book-keeping regularly employed by the Petitioner in the absence of proof that such method does not clearly reflect Petitioner's income. That has been the method employed by the Petitioner all through the years here involved whether it is '43, '45 through '47. It is Respondent's position that upon the receipt of the dues, the entire amount should be taken into income. In other words, that \$10.00 received in December should be taken into the account and put in the income for that year. Even assuming that the Respondent is correct in his treatment of these dues, he was in error as to the correct amount in his notice of deficiency, the correct amount is reflected in the stipulation.

Now, based upon the decision of this Court, and the various issues involved, Petitioner may be entitled to a net operating loss carry-back from either or both of the years 1946 and 1947. Respondent in his notice of deficiency failed to allow any net operating loss deduction in either or both of the years 1944 or 1945. A 1946 carryback as you know, would be carried back to '44, and 1947 back to 1945.

Now, as to the excess profits tax credit, we claim that the amount of the unused excess profit credit for the year 1945 carries back to 1943, and the unused excess profit *profit* credit for the year 1946 to the year 1944. Of course the amount of the carry-back credit which Petitioner will be entitled is dependent upon the decision of the Court on the issues involved in this case.

Mr. Friedman: All right. The Commissioner in 1945 was confronted by this situation: There are a number of clubs similar to the Automobile Club of Michigan. Up to [fol. 151] 1943 the Commissioner having inquired into the

taxability or the exempt status of these clubs that had, as this one had been, exempt, by ruling of the Commissioner, not as a matter of law, but by ruling of the Commissioner that they had theretofore invoked the tax exempt status, that is, they were not required to file income tax returns or pay the income taxes that a corporation ordinarily would be required to pay. As a result of a tremendous amount of litigation in this court as well as other courts, and I believe the Supreme Court, too, it was ruled prior to 1943 that automobile clubs similar to the Automobile Club, Petitioner in this case, that they were taxable, that when the Commissioner first commenced making his rulings that these clubs were exempt, the conditions then had changed in the interim, that in the period from when he had made the rulings up to 1943. Now, on brief the Respondent will point out these cases, cite them, and it was the position of the Commission that all Automobile Clubs were to be given like treatment with regard to their income tax liability. In 1945 the Commissioner acting in this case as he had acted in other cases similar to this inquired of the Petitioner as *it is* status, its operations and other material facts which would permit him to determine whether this club came in the same category as the others, and after taking the matter under consideration and having received the return of the questionnaire, he saw no reason why this Petitioner should be given different treatment than other automobile clubs, and accordingly taxed them on the basis that he taxed the other clubs, that is, he ruled that they were taxable as of January 1, 1943.

The Petitioner filed returns. I should say at this point that they filed federal corporate income tax returns and excess profits tax returns in October of 1945. Those returns were for the taxable years ended December 31, 1943 and 1944. The stipulation of facts contains an accompanying letter in which Mr. Berry stated to the Commissioner that he was filing those returns under protest. They didn't go along with this ruling of the Commissioner.

Now, since Mr. Berry has conceded the taxability of the Petitioner from July 16, 1945, onward, and it is presumed [fol. 152] that he also would concede that the Petitioner was taxable as of January 1, 1943, were it not for the fact

that as he claims or the Petitioner claims the letter was sent retroactively. So far as that issue was concerned, I believe the Respondent would leave it rest there and take up the question of retroactive effect of that letter on brief.

The Court: What is the significance of the date July 16th?

Mr. Friedman: That is the date on which the Commissioner sent a letter to the Petitioner informing the Petitioner that because of rulings which the Commissioner had made, and because of decisions in other automobile club cases, in the taxing of automobile clubs throughout the country as of January 1, 1943, that he was revoking his rulings which he had theretofore made in 1934 and 1938, that he was revoking those rulings and putting them in a taxable status as of January 1, 1943. That is the letter which is dated July 16, 1945.

The Court: I see.

Mr. Friedman: Now in the amended petition—and I believe at this point perhaps—I just noticed it, perhaps the Court might like to change the caption of the amended petition. It reads, "Automobile Court of Michigan." That is probably a typographical error.

Mr. Berry: If it says anything other than Automobile Club of Michigan, it is in error. It should be Automobile Club of Michigan.

The Court: It may be amended to read Automobile Club of Michigan.

Mr. Berry: Let's see that. Just a moment. Mine says "Club."

The Court: Well, this as filed says, "Court."

Mr. Berry: One says "Club" and one says "Court." It should be Automobile Club.

Mr. Friedman: Now, the amended petition puts in issue the question of, the same issues that the original petition did, but in addition it puts in issue the question of the proper deduction of amortizing the cost of the leasehold interest on their headquarters, club headquarters office at 139 Bagley, and perhaps we should dispose of that right [fol. 153] away. The amended petition alleges that the Petitioner paid on April 12, 19—

Mr. Berry: —'26.

Mr. Friedman: — '26, a consideration of \$750,000.00. No, I beg your pardon, \$275,000.00. Was it two hundred seventy-five?

Mr. Berry: Two hundred seventy-five.

Mr. Friedman: \$275,000.00 for a leasehold interest the term of which was originally 99 years commencing on July 1, 1916, and at the time that they acquired it in 1926 it had an unexpired term of ten years' lease or 89 years, and that prior to 1941, again we come back to this, January 1, 1943, rather, and again that is the year in which these Acts began that they had not capitalized this asset on their books, but they had written it off, expensed it in other words. But they take the position in the amended petition that they did that improperly, that while it might have been fairly good accounting practice, it didn't square up with income tax law, and now they want to restore the value of that leasehold interest as an asset and amortize it over a period of years, and the amended petition states that the fair market value of that leasehold interest as of January 1, 1943 was \$750,000.00. We have eliminated that issue out of the case by a stipulation of facts, and the court when it gets the stipulation of facts, and the amended petition will note that that particular issue was set forth in paragraph 5-i of the amended petition. It has been eliminated as an issue by paragraph 23 of the stipulation. In other words, that particular issue has been settled by the parties as evidenced by paragraph 23 of the stipulation.

. . . . .

Mr. Berry: Your Honor, I believe Mr. Friedman stated, I would like to see if I understood the statement correctly, that in the Commissioner's letter of July 16, 1945, except it be in the stipulation, referred to other clubs. The only reference in that letter of July 16, 1945, to any other organization is contained the first paragraph which I read as follows. This is from the Commissioner of Internal Revenue to the Automobile Club of Michigan and it is from the letter of July 16, 1945.

[fol. 154] The Court: Mr. Berry, is it necessary to read that in the record?

Mr. Berry: No, I am not going to read the letter. The



first paragraph, three lines, will explain my position. "Reference is made to the information submitted by you for use in determining your status for federal income tax purposes. In view of the opinion expressed in GCM-23688, cumulative bulletin 1943, page 283." Now, that is the reference to the American Automobile Association, an association of automobile clubs. Based on that, the opinion that he rendered in connection with the American Automobile Association case, he therefore holds in this letter that the Automobile Club of Michigan is taxable. Now, it is quite true that subsequent and in 1945 the Commissioner did proceed against other clubs similarly to the proceeding here. Now, if the Court should find that we are entitled to depreciate our assets on the basis of the fair market value of same, as at the date we became taxable, it will be necessary for the Court to have in its records the fair market value of those assets. Now, a stipulation has been prepared by Respondent to which Petitioner will agree and which is in the hands of the government.

. . . . .

Mr. Friedman: \* \* \* we did for the convenience of both parties and to the Court send our Revenue Agent Engineer over to the Petitioner's office and through a lot of work, and only for the purpose of convenience and not for the purpose of in any way consenting to their idea of fair market value, we have arrived at figures of fair market value of assets depreciable, assets of January 1, 1943, and these are as follows: Buildings \$35,550.00.

Mr. Berry: Wait a minute. Okay.

Mr. Friedman: Office furniture and fixtures, \$105,000.00. Leasehold improvements, \$103,730.00. Building alterations, \$25,780.00. Automobiles and trucks, \$12,530.00. \* \* \*

. . . . .

Mr. Berry: Your Honor, I will call Mr. Matheson. Take the witness stand, please.

Whereupon,

[fol. 155] MATHESON, EDMUND S., called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name and your address for the record.

The Witness: Edward S. Matheson, the address, business address 139 Bagley, City of Detroit.

Direct Examination.

By Mr. Berry:

Q. Mr. Matheson, will you state what your business connection is.

A. I am the General Manager of the Automobile Club of Michigan.

Q. And how long have you been General Manager of the Automobile Club of Michigan?

A. For the past seven months.

Q. Prior to that time what was your employment?

A. The assistant general manager.

Q. Of the Automobile Club of Michigan?

A. For five years.

Q. How long have you been employed by the Automobile Club of Michigan?

A. Thirty-two years this coming December.

Q. What have been some of the positions you have held in connection with the Club?

A. For 28 years Manager of the Travel Department, and then the Assistant Managership job of the Club.

Q. Are you familiar, you are familiar with the fact that the litigation here involved involves the years 1943 through 1947?

A. I am.

Q. Aside from any legal arguments as to whether or not it is legal, were you familiar with the operations of the Automobile Club of Michigan during those years?

A. Quite extensively from a view of the operations.

Q. Would you state as brief - - as you can some of the functions or the purposes for which the Automobile Club was organized and its functions?

[fol. 156] A. Well, as a business organization we devote most of our resources and efforts to the bettering of the general conditions for motorists and the promotion of proper laws relating to the use of the motor car, especially the use that our members put it to, the promotion of travel both interstate, within the state, and intrastate, national and international in all its phases, and the use of the automobile for other modes of transportation. We have been engaged in the promotion of safety and traffic problems on a local and state-wide scale and also nationally. We devote considerable time to the promotion of school boy patrols. We organized the school boy patrols in the State of Michigan. Our plan has been adopted on a national scale.

Q. Just how does that operate?

A. We organize these patrols in the schools of the State. We furnished text books to the teachers and to the schools, of course, as to the proper conduct of how these patrols should operate, and as a reward to the patrol boys we take them to, some of them to Washington annually to interest them in further promoting the safety of guiding children back and forth across busy intersections on the way to school. We have also conducted seminars in the University of Michigan annually — which we promote the education of the school teachers in the state to the driver training courses which have been, have become very popular in recent years. Our safety and traffic department and engineer department also makes traffic surveys through the State of Michigan at the request of various cities and communities, and many of our proposals have been adopted by these cities from a safety standpoint. We supply our members both here in Michigan and those affiliated with the Three A with emergency road service in which we come to the aid of people in distress, that is their cars are disabled. We publish a monthly magazine that contains news of travel, of laws as it pertains to the use of cars. That magazine goes to every member of the Club, every active member of the Club. In the travel activity we supply maps, log highways throughout the country, throughout North America. We advise the tourists as to the conditions which they will encounter. We assist the American Automobile [fol. 157] Association in its appointments of proper places

to be housed and be fed; in the realm of international travel we secure reservations for our members when traveling abroad; we ship their cars to European ports at the present time, and will to Asia very shortly. In all we attempt to do for the motorist in the collective way that which he is unable to do as an individual.

Q. Mr. Matheson, somewhere in some of these papers is a reference to sign-boarding or signing, or some symbol to designate traffic ordinances or something.

A. We promote the proper signing of city streets and highways throughout the country. In the early days of the Club it was necessary for us to provide signs to be placed on the city streets and on many of the highways.

Q. You are referring now to these stop signs?

A. Stop street signs and directional signs.

Q. Directional signs. You say the Club furnished those?

A. Oh, yes.

Q. Gratis to the community?

A. Gratis to the community.

Q. In these various activities is there any attempt to make a profit in connection with those services you render, that is in competition with commerce or business?

A. None whatsoever.

Q. Does the Club have any capital stock?

A. None whatsoever.

Q. Has the Club ever paid any dividend?

A. None whatsoever.

Mr. Berry: That is all I have. Mr. Friedman.

Cross-examination.

By Mr. Friedman:

Q. The Club maintains regular commercial bank accounts throughout the period from 1943 to 1947, I presume?

A. That's right.

Q. And are you familiar with the way the bank accounts were kept?

A. No, I am not, not during those particular years.

[fol. 158] Q. Are you familiar with the number of bank accounts which were maintained during those years?



A. I can't say for sure that I am. I would assume that I know, but I wouldn't want to give a specific figure on that.

Mr. Friedman: That is all.

Mr. Berry: I have no further questions.

(Witness excused.)

Mr. Berry: Your Honor, at this point we have two other witnesses. I would like my partner and associate, Mr. Moorman, to have the privilege of examining the witnesses.

Mr. Moorman: The Petitioner calls Mr. J. C. Sasser.

Whereupon,

SASSER, JOSEPH C., called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name and address for the record, Mr. Witness?

The Witness: Joseph C. Sasser. Business address, 139 Bagley, Detroit.

Direct Examination.

By Mr. Moorman:

Q. Mr. Sasser, are you employed by the Automobile Club of Michigan?

A. I am.

Q. How long have you been so employed?

A. Since June 30, 1924.

Q. What position do you now hold at the Club?

A. I am Assistant Treasurer, I am also Controller and Assistant General Manager.

Q. How long have you been Assistant Treasurer, Mr. Sasser?

A. Since June 30, 1924.

Q. Are Petitioner's books and records in your custody?

A. They are.

Q. Are Petitioner's books kept in accordance with your instructions?

[fol. 159] A. They are.

Q. You are the chief accounting officer for the Petitioner?

A. I am.

Q. On what method of accounting does the Automobile Club keep its records?

A. They are kept on the accrual method.

Q. To your knowledge, how long has the Petitioner's books been kept on this method?

A. Ever since I have been with the Club.

Q. Are you familiar with the manner in which the Petitioner's books reflect the receipt of dues?

A. I am.

Q. Joint Exhibit 10 is a balance sheet, the balance sheet figures of Petitioner for the years commencing December 31, 1942 through December 31, 1947. I have a copy of such exhibit.

Mr. Friedman: Oh, yes, this is the stipulated Exhibit Number 10?

Mr. Moorman: That's right.

Mr. Friedman: Sure, I have it.

Q. (By Mr. Moorman): Mr. Sasser, I hand you Exhibit 10 which contains the balance sheets of the Club as of December 31, for each year from 1942 through 1947. Will you describe how membership dues appear on the balance sheets during the period 1942 to 1947 inclusive?

A. Will you ask that question again, please, Mr. Moorman?

Q. Will you describe how membership dues appear on the balance sheet during the period 1942 to 1947 inclusive?

A. The second item under the liabilities side of the balance sheet is an item of unearned membership dues. That is the liability, that is exactly what it states. This is unearned membership dues, in other words, dues paid in advance.

Q. How does the exhibit, describe how dues are taken into income after being credited to the unearned income liability account?

A. I would like to illustrate that with one membership. A \$10.00 membership is received, it is credited.

[fol. 160] Mr. Friedman: Just a minute. Might I interrupt there and ask the witness whether when he said a \$10.00

membership, does he mean \$10.00 cash is received as dues in payment of a membership, is that-what you mean?

The Witness: Right, right.

Mr. Friedman: That would be better if he stated that, I think.

Mr. Moorman: He is using this as an illustration.

The Court: He has so stated now. Proceed.

The Witness: When \$10.00 cash is received for a membership it is credited to the unearned dues account. In the first month of that membership one-twelfth of that membership is credited to membership income. In other words, we accrue one-twelfth of the membership per month, one-twelfth of all memberships in the month that are in force. Does that answer your question?

The Court: Witness, when you do so what appears on your balance sheet?

The Witness: What appears on the balance sheet would be the total amount of unearned dues that have not been taken into the membership income account.

The Court: How are dues which have been taken into the income designated on the balance sheet?

The Witness: They are designated by the final result of this unearned membership dues, dues which were taken into the account would be reflected in what we call the operating statement of income and expenses.

The Court: Proceed.

Mr. Moorman: Joint exhibit in the stipulation, Exhibit 9, the balance sheets of the Petitioner from December 31, 1934 through December 31, 1941.

Mr. Friedman: I got it.

Q. (By Mr. Moorman): Mr. Sasser, I hand you Joint Exhibit Number 9 and ask you, have the accounts of the Petitioner since 1934 which is the earliest year we have the records in evidence in this proceeding, have the accounts of the Petitioner since 1934 reflected as deferred income the unearned portion of membership dues?

A. They have.

[fol. 161] Q. Why did you approve and adopt this method of accounting for membership dues?

A. Because I think that that is the only sensible way

to conduct a business of this kind. By that I mean if you collect dues in advance, you are not entitled, should not be entitled to use just any and all, any part of that amount, which you might collect this month which should be spread over a period of twelve months. That is what the \$10.00 dues is paid for, to cover a period of twelve months.

Q. If there any other reason that, in your opinion, makes this method of accounting the proper method, for example, refunds?

A. Well, it has been the policy of the Automobile Club of Michigan to make refunds for unused or unearned portions of the membership as long as I have been with the Club, and that is just in my mind a matter of what is right and proper. If all of the membership has not been used, we will refund the unused part of it.

Q. Well, was this the policy of the Club during the taxable years that are involved in this proceeding?

A. It was.

Q. As I understand it, your testimony is that that has been the policy of the Club since your association with the Club?

A. It has.

Mr. Moorman: Does the Court—may I have this?

Q. (By Mr. Moorman): I hand you again Joint Exhibit 10 which is the balance sheet of Petitioner from 1942 to 1947, and I ask you, Mr. Sasser, were you requested by me to compare the figures contained on this exhibit with the books of the Petitioner?

A. I was.

Q. And have you done so?

A. I have.

Q. And do the balance sheet figures correctly reflect the figures as they appear on the Petitioner's books?

A. They do.

I have no further questions.

Mr. Friedman: Are you through?

Mr. Moorman: Yes.



[fol. 162]

## Cross Examination.

By Mr. Friedman:

Q. Mr. Sasser, when you collected the \$10.00 in cash from a member for his membership dues in the years in which \$10.00 was the amount of the membership before it was changed to \$12.00, how did you apply the \$10.00? Let me ask you this further question to straighten you out on that. Did you take a part of the \$10.00 and allocate it for the magazine which the Club calls "The Motor News"?

A. There is \$1.00 set aside for that account, yes.

Q. So that leaves you \$9.00 for other membership, for dues, for other membership functions, is that right?

A. That's right.

Q. And how much did you pay to a salesman or any other person or whatever his name might be known for soliciting that member to pay his dues?

A. What is the Commission or membership, the commission on membership sales, is that your question?

Q. Well, all right, call it that way.

A. The commission is \$2.50 for a new membership.

Q. Now, that is \$7.00?

A. I beg your pardon?

Q. That is \$7.00?

The Court: That is \$6.50.

Q. (By Mr. Friedman): How much did you say it was?

A. \$2.50 on a new membership.

Q. That is the commission?

A. Yes.

Q. All right, and a dollar allocated to the Motor News. That is \$6.50 left, isn't it, is that right?

A. That's right.

Q. Now, is it your idea that if a member resigned from his membership, that he would be entitled to a refund, is that your idea?

A. That's right.

Q. In making the refund, did you refund him any part of the \$1.00 which was allocated or set aside for the Motor News?

A. We refunded on a pro-rata basis, and the basis was \$10.00. We refunded on the basis of \$10.00.

[fol. 163] Q. Now, now just answer the question.

Mr. Moorman: The witness—pardon me—the witness is attempting to answer the question Mr. Friedman asked. Will you let him come to the conclusion?

Q. (By Mr. Friedman): All right. Now, you said you refunded on a pro-rata basis, and what is the basis of that making that pro-rata, what items did you take into account?

A. As an illustration, if a membership had six months to run, we refunded \$5.00.

Q. Now, how did you arrive at the \$5.00?

A. Because it was one-half of a year, one-half of a year to run, and simply took one-half of the membership fee, the yearly membership.

Q. Although you paid the salesman \$2.50 for soliciting his membership, right?

A. That's right.

Q. You paid or set aside for the Motor News \$1.00?

A. That's right.

Q. Right, and you were left with \$6.50 for—

A. That's right.

Q. Payment for that member for finances other than The Motor News?

A. That's right.

Q. Would the salesman pay back any part of his \$2.50?

A. Not if it had run for six months, make no deduction from the salesman.

Q. What if it ran for less than six months?

A. I don't know. I don't remember any iron-bound rule for that. If the membership was cancelled, say, and it had not run over 30 days there would be a deduction.

Q. Do you have Exhibit Number 2 with you? I'll show you Exhibit 2, and ask you whether you know that those are the by-laws of the Club which existed and were in effect during all the years and during all the time up until March 15, 1947?

A. I know that.

Q. Now, point out in those by-laws any provision where there was required of you to refund dues to a member in the case he resigned?

[fol. 164] A. There isn't.

**Q.** There isn't any. As a matter of fact, there are provisions in those by-laws which required the member to pay up more dues in the event he left the organization for some reason or other, isn't there?

**A.** Would you point that out to me? I don't understand just what you are referring to?

**Q.** Withdraw that question for a moment. Let me refer you to Section 5 of Article Number 10 found on page 13 of Exhibit 2. "Any member who is in good standing not in arrears or indebted to the Club against whom no charges are pending may resign his membership by delivering a notice thereof to the Secretary who shall report the name—pardon—the same at the next meeting of the Board of Directors, and upon resigning such member shall forfeit all his rights and interest in the Club property and assets." That was one of your by-law provisions, was it not?

**A.** Yes, sir.

**Q.** Let me read you Section 10. "Any members whose annual dues remain unpaid for 30 days, after receiving notice from the Club Treasurer that they are due, shall stand suspended from all privileges of the Club. He shall be notified by the Treasurer of his suspension and if he shall fail to pay such dues within 30 days after such notification or suspension he shall cease to be a member of the Club, but he shall not thereby be relieved from payment of the dues and shall be held for the payments of the dues after two months' dues and the expense of collecting the same." So rather than you in your by-laws having any provision for refunding dues to members, we find provision in there, do we not, for actually collecting dues for members, isn't that a fact?

**A.** What you read there is true.

**Q.** All right. Now, during the years 1943 through 1947 the Club, Petitioner in this case, maintained certain bank accounts in the City of Detroit?

**A.** That's right.

**Q.** How many bank accounts did they maintain?

**A.** There is the National Bank of Detroit, the Detroit Bank, the Manufacturers Bank, the Industrial Bank.

[fol. 165] **Q.** Yes, and into what account was the items stated in your income account as it is shown on it, on your

ledger, in what account was the receipts received indicating that account, and — what account were they deposited?

A. National Bank of Detroit.

Q. That is, the various items mentioned in your income account were deposited into the National Bank of Detroit?

A. That's right.

Q. Into one general account?

A. That's right.

Q. Are you sure about that, that there was one general account into which all items of receipt indicated in your income account were deposited during that time?

A. All receipts go into the National Bank of Detroit first. We have two accounts in the National Bank of Detroit. Now, if it is in the investment account, the collection of interest, return on investment, it is put into that investment account.

Q. All right, so that the situation is this: All receipts of the Petitioner were deposited into one general account, is that right?

A. That's right.

Q. And those deposits, those receipts include membership dues?

A. That's right.

Q. That's right. There was no attempt in the account to segregate membership dues from any of the other items of income, is that right?

A. No.

Q. Is that correct, Mr. Sasser?

A. That's right.

Q. That at certain times the governing body of the Petitioner, what is it, a board of directors?

A. Yes.

Q. The Board of Directors decided to allocate from the account certain amounts of money to be used for investment purposes by the Petitioner?

A. Right.

[fol. 166] Q. That is, if they noted that a certain security or certain property was proper to be invested in, they wanted to have the funds available to make the investment, is that right?

A. Yes.



Q. And for that purpose they opened a separate account which you now term as an investment account?

A. That's right.

Q. And this money which was intended to be used for investment purposes was put into the investment account, is that right, transferred to the investment account?

A. That's right. The investment account is really, the purpose of that investment account is as collections are made, interest collections, they are all paid to the National Bank of Detroit, they are put into that account.

Q. Now when you say that the company has always used the accrual method of accounting, did you read paragraph Number 25, 25 of the stipulation of facts, Mr. Sasser?

A. No, sir.

Q. Is it not a fact that before December 31, 1936, the furniture, fixtures, and office equipment, building improvements were recorded as assets in the accounts of the books of the company?

A. I don't remember the date, but I think that is correct. I know they were at one time. I don't remember just what year.

Q. Yes, and on December 31, 1936 the entire remaining assets appearing on the books of the company except automobile and automobile trucks were charged as an expense?

A. That's right.

Q. And thereafter again with the exception of automobiles and automobile trucks, as you acquired any property, the cost of the property was taken as an expense?

A. That's right.

Q. Do you consider that keeping your books on an accrual method of accounting?

A. Maybe not that particular feature of it.

Mr. Friedman: That is all.

[fol. 167] Re-direct Examination.

By Mr. Moorman:

Q. Mr. Sasser, you did testify on direct examination that it has been the policy of the Automobile Club of Michigan since your association with the Club to refund the unearned

portion of membership dues at a time of a member's resignation, death or termination for any other reason?

A. That is true.

Q. Attached to the stipulation of facts as Joint Exhibit 2-A—

Mr. Moorman: Is that the by-laws amended?

Mr. Friedman: Yes.

Q. (By Mr. Moorman)—are the by-laws of the Automobile Club of Michigan as effective March 15, 1947, and I hand you this exhibit, Mr. Sasser, and ask you to read Article 12. Would you read it for the record, please?

A. Aloud?

Q. Please.

A. "Article 12. Termination of membership. Section 1. The privilege of membership shall be terminated by death, by resignation, by non-payment of dues as outlined in Article 11, or upon other reasonable cause by ten days' notice in writing from the office of the Secretary or upon order of the Board of directors, such notice of termination to be accompanied by check for the unused portion of the annual dues, as determined by the Board of Directors."

Q. Now, is this the policy that you were testifying to, the Club—

A. That is true.

Q. Mr. Sasser, just so there will be no doubt as to the treatment of receipt of membership dues, I would like to ask you what would be the amount of the refund if a membership was terminated at the end of one month, and we will assume the figure of \$12.00 as being the cost of the membership?

A. Terminated at the end of one month?

Q. That's right.

A. If we paid a commission on it, we would deduct \$2.50. [fol. 168] Q. No, I asked you what would be the amount of the refund to the member if he cancelled, terminated his membership at the end of one month?

A. It would be \$10.00 less 83⅓ cents.

Q. What is the explanation for the 83 cents?

A. Because there were 12 months in a year, and—

Q. We were assuming that the membership, the cost of

the membership was \$12.00 just for purposes of explanation?

A. It would be a refund of \$11.00.

Q. And what would be the amount of the refund at the end of the second month if membership was terminated?

A. \$10.00.

Q. So that the Commission expense that might be involved, and any other feature of expense in connection with securing of a membership would not be retained but would be returned as part of the refund to the member if he resigned?

A. I can't give you an iron-bound rule for that. I just know if a membership is cancelled shortly after it is taken out, if we have paid a commission on it, we deduct the commission that is paid on it. If it has run for any time, two, three, four months, it is refunded strictly on pro-rata basis.

The Court: May I see this exhibit, please, that he is looking at? What paragraph was that now? Proceed.

Q. (By Mr. Moorman): Associate counsel wants to be sure that I ask the question, was the making of refunds of membership dues an established policy of the Club during the period of your association with the Club?

A. Ever since I have been with the Club.

Q. Mr. Sasser, on cross examination you were asked if the Club segregated its funds; may I ask you, at this time is it necessary for the Club to segregate its funds to be in a position to determine its liability for any unearned membership refund?

Mr. Friedman: I object to that, your Honor. I think that is a question that this witness is incompetent to answer, and it doesn't make any difference anyhow. The fact is they didn't make any segregation.

[fol. 169] The Court: Well,——

Mr. Moorman: The question is of this witness, was it necessary to make a segregation to know the liability of the Club for unearned membership dues?

The Court: You are asking an accounting question. The witness is an accountant. I think we will take the answer. Will you answer that?

The Witness: Now, will you ask the question again, please?

Q. (By Mr. Moorman): Is it necessary for the Automobile Club of Michigan to segregate any funds in order to determine its liability for unearned membership dues?

A. By segregating, do you mean setting aside in a certain bank account?

Q. That is what I mean.

A. No, it is not.

Q. It is not?

A. No.

Q. In cross examination you were asked, as I recall it, the question, did the books of the Automobile Club of Michigan reflect that capital investment in certain depreciable assets that either may have been set on the books, the depreciation account, or expensed. Do you recall being asked that question?

A. Yes.

Q. Mr. Sasser, at any time prior to the revocation of the tax exemption that was given to the Automobile Club by the Commissioner of Internal Revenue, did it make any difference whether expenditures for depreciable assets were expensed or reflected on the books in the depreciation reserve?

A. Did it make any difference?

Q. Did it make any difference to the Automobile Club?

A. Well, it did not tax-wise because we did not have a tax situation.

Q. What did you mean when you said it did not make any difference tax-wise?

A. We weren't taxable. We didn't have that problem to consider.

[fols. 170-171] Q. You mean you did not have the problem of depreciation because there was no income tax?

A. That's right.

Q. Mr. Sasser, on the matter of refunds once more, would you tell the Court of the instance of the lowest refund that the Club made, to your knowledge?

A. Well, the lowest one we could possibly make would be 84 cents. That would be for one month.

Q. Did you actually make such a refund?

A. Yes, sir.

Mr. Moorman: Thank you.



### Re-cross Examination.

By Mr. Friedman:

Q. About how many of those types of refunds did you make, 84 cents?

A. Well, surely not many, not many, Mr. Friedman, but I know we have made them.

Q. Well, don't you have to strain your memory a bit to recall refunds of any kind?

A. No, I don't, because I have signed many many of the checks.

Q. Well, how many members have you got, how many members did you have in 1945, let's say?

Mr. Moorman: That is stipulated. Do you want to refresh the witness's memory?

The Witness: I don't have the actual figure in mind.

Q. (By Mr. Friedman): In 1945 243,630 members. How many refund checks did you sign in 1945?

A. I do not have the information at this time.

Q. And in 1945 you received in cash on account of membership dues \$2,435,043.97. How many dollars of that money did you refund on account of resignation of members or refunds did you make in 1945?

A. I do not have those figures with me, Mr. Friedman.  
[fol. 172] The Court: Witness, I am still a little bit hazy about this business of refund. Now, Article 12, Section 1, which you read in the record, indicates that the question of amount of refund is up to the Board of Directors. Now, does the Board of Directors as a matter of practice pass on each refund?

The Witness: No, sir.

The Court: Well, then, has the Board of Directors, to your knowledge, in its minutes a resolution passing generally from time to time upon the amount of refund to be made or adopting a formula from which you as accountant could figure a refund?

The Witness: Not to my knowledge. I can only say the Board of Directors has been thoroughly familiar with our method of refunds.

The Court: Well, then, just what did the Board of Di-

rectors have to do with determining the unused portion of the annual dues, or did they have anything to do with it?

The Witness: Well, the Board of Directors adopted those by-laws, and,—

The Court: Who did determine how much of the refund was to be made in each instance?

The Witness: I can only say that it had been a well-known policy with the management of the Club ever since I have been with the Club.

The Court: Well, you are not responsive to the question. I say, who determines how much of a refund is to be made in each instance, who writes the check?

The Witness: The check is written in our general accounting department.

The Court: Who signs it?

The Witness: Two signatures are required. I am a signer and several, we have several authorized to sign it.

The Court: Who inserts the amount in the check?

The Witness: A man by the name of Detrich who has charge of the membership accounts:

[fol. 173] The Court. How does he determine the amount?

The Witness: By the unexpired portion of that membership.

The Court: Who designated to him his method of determination of amount?

The Witness: The Manager of the Club and the Assistant General Manager.

The Court: I see, that is all.

Mr. Moorman: Step down, Mr. Sasser.

(Witness excused.)

Mr. Moorman: The Petitioner calls Mr. George G.quette.

Whereupon.

QUELETTE, GEORGE G., called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, Mr. Witness.

The Witness: George G. Quelette, address 2000 Buhl Building, Detroit, Michigan.

Direct Examination.

By Mr. Moorman:

Q. What is your employment, Mr. Quelette?

A. Employed by Ernst & Ernst.

Q. Are you familiar with the system of accounts for the Automobile Club of Michigan?

A. I am.

Mr. Moorman: Mr. Clerk, I hand you for identification Petitioner's—

The Clerk: Exhibit 23 for identification.

(The document above referred to was marked Petitioner's Exhibit No. 23 for identification.)

Q. (By Mr. Moorman): Mr. Quelette, I hand you Petitioner's Exhibit 23 for identification, and I ask you will you identify the document I have just handed to you?

A. This is an analysis of deferment of income for membership dues collected per the books of the Automobile Club of Michigan.

[fol. 174] Q. What does this schedule purport to show again?

A. This schedule shows a reconciliation of the differences between dues collected and dues earned.

Q. Did you prepare this schedule?

A. I did.

Q. And where did you get the figures that are shown on this schedule?

A. I got the information from the books and records of the Automobile Club of Michigan.

Mr. Moorman: I offer in evidence as Petitioner's Exhibit Number 23 this schedule.

The Court: Any objections?

Mr. Friedman: There is no objection. As I understand it, it is a compilation made by the witness from the books of the corporation? There is no objection to that.

The Court: There being no objection, the exhibit may be received.

(The document heretofore marked Petitioner's Exhibit No. 23 for identification, was received in evidence.)

Q. (By Mr. Moorman): Mr. Quelette, I call your attention to the line on this schedule which is captioned "Less refunds due to cancellations and duplicate payments, et cetera," and I ask you, do you know what part of the amounts comprising this line, represent actual refunds in membership dues?

A. I do.

Q. Do you have a memorandum of these amounts?

A. I have a memorandum of those figures which were taken from the books of the Club.

Q. And are these the actual refunds that were made in these years?

A. Actual refunds.

Q. Will you read the amounts of those refunds into the record, please?

A. For the year ended December 31, 1943 the amount of refunds due to cancellations of membership were \$13,204.33. The balance of the refunds were due to duplicate payments. The year ended December 31, 1944, the amount of refunds due to cancellation of membership were \$13,347.97. The balance were due to duplicate payments.

[fol. 175] Mr. Friedman: Would you mind repeating that, please?

The Witness: Pardon?

Q. (By Mr. Moorman): Would you repeat that?

A. The amount?

Mr. Friedman: Yes, cancellation.

The Witness: \$13,347.97. For the year ended December 31, 1945, the amount of refunds due to cancellation of memberships were \$17,492.74. The balance were due to duplicate payments. For the year ended December 31, 1946 the amount of refunds due to cancellations of membership were



\$21,867.71. The balance were due to duplicate payments. For the year ended December 31, 1947 the amount of refunds due to cancellation of membership were \$24,778.87. The balance were due to duplicate payments.

Q. (Mr. Moorman): You use this expression "balance due." What do you mean?

A. The balance between the amounts that I read as having been refunds due to cancellations of memberships and the total of the refunds shown on the Exhibit 23.

Q. I see.

Mr. Moorman: Mr. Clerk, would you mark this?

The Clerk: Exhibit 24 for identification.

(The document above referred to was marked Petitioner's Exhibit No. 24 for identification.)

Q. (By Mr. Moorman): Mr. Quelette, I hand you Petitioner's Exhibit 24 for identification, and I ask you will you identify the document I have just handed to you?

A. This is a balance sheet of the Automobile Club of Michigan, at June 30, 1945.

Q. Did you prepare this?

A. I did.

Q. Where did you get the figures that are reflected in there?

A. I got the information from the books and records of the Automobile Club of Michigan.

Mr. Moorman: I offer this in evidence as Petitioner's Exhibit Number 24.

The Court: Any objections?

Mr. Friedman: No. As I understand this is a balance sheet at June 30, 1945, and we already have in evidence balance [fol. 176] sheets for all period- from December 31, 1934 through December 31, 1947.

Mr. Moorman: That is correct. The balance sheets that you have referred to are year ending balance sheets, for the periods that you have just described. This particular exhibit has a purpose in being placed into evidence, the balance sheet as of June 30, 1945. For the reason that one of the positions that the Petitioner is taking in this particular case is that it may come into taxable status as of that day.

The Court: In other words, the exhibit, that is Exhibit Number what?

Mr. Moorman: 24.

The Court: Petitioner's Exhibit 24.

Mr. Moorman: That concludes the direct examination.

Mr. Friedman: There are no questions.

The Court: That is all, witness. Just a minute, Mr. Quette. Do you wish to offer Petitioner's Exhibit 24?

Mr. Moorman: Yes, sir.

The Court: Petitioner's Exhibit 24 will be received.

(The document heretofore marked Petitioner's Exhibit No. 24 for identification, was received in evidence.)

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[fol. 177] BEFORE THE TAX COURT OF THE UNITED STATES  
20 T. C. 145

AUTOMOBILE CLUB OF MICHIGAN, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

FINDINGS OF FACT—Promulgated September 23, 1953

Docket No 27988.

1. In 1945 the respondent held that the petitioner was not an exempt organization under the Internal Revenue Code or under prior revenue acts, revoked rulings of exemption made in 1934 and 1938 and required petitioner to file returns for 1943 and 1944. *Held*, that the portion of Regulations 103, Sec. 19.101-1, and the corresponding portions of earlier regulations, providing that where an organization established its right to exemption it need not thereafter make a return of income unless it changed its character, did not operate to exempt petitioner from tax for 1943 and 1944.

2. *Held*, that the period of limitations for assessment and collection of tax for 1943 and 1944 had not expired at the time the respondent mailed the notice of deficiency to petitioner.

3. The petitioner kept its books and filed its returns on the accrual basis. During the taxable years it received payment in advance of annual membership dues without restrictions as to their use and disposition. *Held*, that the entire amount of dues constituted income for the year in which received.

4. Since there is no showing that at any time during its existence prior to January 1, 1943, the petitioner was an organization exempt by law, depreciation or amortization on properties, acquired prior to January 1, 1943, and used [fol. 178] by petitioner in its business after that date, is to be computed on the same basis as if petitioner had always been held to be a corporation subject to tax.

Raymond H. Berry, Esq., and A. H. Moorman, Jr. Esq., for the petitioner.

A. J. Friedman, Esq., and Charles Speed Gray, Esq., for the respondent.

Withey, Judge: The respondent determined deficiencies in the petitioner's income and excess profits taxes as follows:

Year	Deficiencies	
	Income Tax	Excess profits tax
1943 .....	\$49,016.97	\$128,953.72
1944 .....	48,781.99	157,307.29
1945 .....	42,373.66	
1946 .....	13,645.94	
1947 .....	7,365.87	

The principal issues are the correctness of the respondent's action (1) in determining that for the years 1943 through 1947 the petitioner was not exempt from income and excess profits taxes, as a club organized and operated exclusively for pleasure, recreation and other non-profitable purposes, within the purview of section 101(9) of the Internal Revenue Code, (2) in determining that the period of limitations for assessment of tax for 1943 and 1944 had not expired at the time of mailing of the deficiency notice, (3) in determining that the entire amount of membership dues received by petitioner during each of the years 1943 through 1947 is to be included in income for the year in which re-

ceived, and (4) in determining the deductions allowable as depreciation or amortization for the years 1943 through 1947. The parties are agreed that all other issues have been disposed of by stipulation or will be disposed of by our decision of the above/stated issues.

[fol. 179]

#### GENERAL FINDINGS OF FACT

A portion of the facts have been stipulated and are found accordingly.

The petitioner is a Michigan corporation and has its office and principal place of business in Detroit. It filed its income tax returns, excess profits tax returns and declared-value excess profits tax returns for the years 1943 through 1947 with the collector for the district of Michigan.

#### Issue 1. Exemption from Taxation.

##### Findings of Fact

On July 21, 1916, the petitioner was incorporated under the laws of the State of Michigan under the name of Detroit Automobile Club for a term of existence of 30 years. It assumed its present name in 1930 and in 1946 its existence was extended for a further period of 30 years. The petitioner was organized as a non-profit corporation without capital stock or shares and has never paid any dividends.

As set forth in petitioner's Articles of Association and its by-laws, as they existed on January 1, 1940, the purposes or objects of the petitioner were as follows:

To promote and foster the healthy growth of the automobile industry; to secure the adoption and enforcement of reasonable and useful traffic ordinances and motor vehicle laws; to promote the establishment and construction of permanent highways for traffic; to interest automobile owners and drivers in the principles of "Safety First" as applied to automobile traffic; to promote touring and to obtain and furnish touring information and obtain the necessary signboarding of public highways; and to co-operate in any work or [fol. 180] movement which may tend to benefit the automobile driver, user, owner or manufacturer, and the automobile industry in general.



In January 1941 the petitioner's by laws were amended to provide that petitioner's funds should be used only to accomplish the foregoing purposes or objects of the petitioner.

The petitioner's board of directors have general charge of management and control of the petitioner's affairs and its funds and property. The board is elected annually and its members serve without pay. The functions of the petitioner are carried out by its officers and employees under the direction of the board of directors.

During the years involved herein until May 1947 the petitioner had three classes of membership, namely honorary, life and active. Honorary membership was limited to 25 in number and includes certain Government officials and other persons named by the board of directors. Honorary members pay no dues and have no voting rights. Life membership is obtained by an active member paying \$250 at one time. Life members are exempt from the payment of future dues and assessments but continue to have all the rights of active members. Active memberships are open to persons (male or female) of good moral character over 16 years of age. In May 1947 the by-laws were amended to provide that any person, wife, son or daughter, domiciled in the home of an active member might become an associate member and that such memberships should run concurrently with the active membership with which it was associated.

The petitioner had no entrance fee but its dues for active members were \$10 annually, except that effective October 1, 1946, they were increased to \$12 annually.

To persons soliciting members the petitioner paid \$2.50 for each new member obtained.

The number of members belonging to the petitioner during the indicated years were as follows:

[fol. 181]	1943	212,865
	1944	224,092
	1945	243,630
	1946	261,695
	1947	244,994

Petitioner's by-laws provide for annual meetings of its members. Until some undisclosed time prior to March 15,

1947, 25 members constituted a quorum. Effective March 15, 1947, 10 per cent of petitioner's membership was required to constitute a quorum.

During 1943 through 1947 the petitioner devoted most of its resources and efforts to the bettering of conditions for motorists and the promotion of proper laws relating to the use of the motor car, the promotion of travel and the use of the automobile for other modes of transportation. It engaged in the promotion of safety, the solution of traffic problems and the promotion of the formation of school boy patrols. It organized the school boy patrols in Michigan. To teachers in the schools it furnished textbooks dealing with the conduct and operation of school boy patrols. As a reward it annually took some of the patrol boys to Washington, D. C. Annually it conducted seminars in the University of Michigan to promote the education of school teachers in the state in driver training courses. Petitioner's safety and traffic and engineer departments made surveys throughout the State of Michigan at the request of various cities and communities and many of its proposals as to safety measures were adopted. Petitioner supplied to its members in Michigan and those affiliated with the American Automobile Association emergency road service. The petitioner published and furnished to each of its active members a magazine containing news about travel and news about laws as they pertain to the use of automobiles. Maps and other touring information with reference to road conditions were also provided, as was assistance to the American Automobile Association in its designation or appointment of proper places for tourists to be housed and fed. The petitioner secured reservations for its members when traveling abroad and arranged for the shipping of their cars abroad. Petitioner also promoted and furnished gratis to various communities proper directional and stop signs. In its services the petitioner attempted to do for the motorist in a collective way that which he was unable to do as an individual.

The petitioner does not engage in or conduct any social activities.

During the early part of 1934, the petitioner inquired of respondent as to whether it was exempt from payment of

the capital stock tax imposed by section 215 of the National Industrial Recovery Act. The respondent informed petitioner that in order to determine whether it was entitled to exemption from payment of the capital stock tax he must first determine whether the petitioner was entitled to exemption from Federal income taxation under the provisions of section 103 of the Revenue Act of 1932. Accordingly, respondent requested petitioner to supply certain information concerning its operations, a copy of its financial statement for 1933 showing assets and liabilities and a classified list of its receipts and disbursements. The petitioner replied by letter and enclosed therewith a balance sheet showing its assets and liabilities as of April 30, 1934.

On June 11, 1934, the respondent wrote the petitioner advising it that on the basis of evidence submitted it was held that petitioner was entitled to exemption under the provisions of section 103(9) of the Revenue Act of 1932 and the corresponding sections of prior revenue acts; that, therefore, it was not required to file returns for 1933 and prior years, and that under the provisions of section 101(9) of the Revenue Act of 1934 it would not be required to file returns so long as there was no change in its organization, its purposes or methods of doing business. The petitioner was further advised that the exemption thereby granted did not apply to taxes levied under other titles or provisions of the respective revenue acts, except in so far as exemption was granted expressly under those provisions to organizations enumerated in section 103 of the Revenue Act of 1932.

[fol. 183] In September 1937, the respondent sent petitioner a questionnaire and requested it to supply certain information concerning its claim for exemption under section 101(9) of the Revenue Act of 1936. The petitioner filled in the questionnaire and returned it to the respondent with a letter and a copy of its financial statement as of December 31, 1936. On July 5, 1938, the respondent wrote petitioner advising that since it appeared that there had been no change in its form of organization or activities which would affect its status, the previous ruling of the Bureau holding it to be exempt from filing returns of income was affirmed under the Revenue Act of 1936.

On May 12, 1945, respondent wrote the petitioner stating

that the Bureau of Internal Revenue was reconsidering the question of the exemption of automobile associations from Federal income taxation in the light of the opinion of the Chief Counsel of the Bureau of Internal Revenue in regard thereto as set forth in G.C.M. 23688, C. B. 1943, page 283. Petitioner was requested to furnish the information called for in the form of a blank exemption affidavit which was enclosed. By letter dated June 11, 1945, the petitioner replied to the respondent's request and enclosed therewith the executed exemption affidavit together with a copy of petitioner's articles of incorporation and by-laws and a copy of its balance sheet as at December 31, 1944.

The respondent wrote the petitioner on July 16, 1945, as follows:

Reference is made to the information submitted by you for use in determining your status for Federal income tax purposes in view of the opinion expressed in G.C.M. 23688, C.B. 1943, 283.

Under date of June 11, 1934 you were held entitled to exemption from Federal income tax under the provisions of section 103(9) of the Revenue Act of 1932 and the corresponding provisions of prior revenue acts, which ruling was affirmed July 5, 1938, under the provisions of the Revenue Act of 1936.

The information recently submitted by you shows that your activities consist of providing travel information and service, rendering emergency road service, publishing the Motor News, locating automobile parts for members' cars to keep them in service, providing safety education in public and parochial (sic) schools, organizing and equipping school patrols and providing traffic surveys for Michigan cities in the interest of safety. Your income is derived from membership dues, interest on investments, and advertising in the Motor News. It is expended for rendering services to your members.

Section 101(9) of the Internal Revenue Code provides for the exemption of:

"Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable pur-



poses, no part of the net earnings of which inures to the benefit of any private shareholder."

Prior revenue acts carry similar provisions.

This office holds that the term "club" as used in the above section of laws contemplates commingling of members, one with the other in fellowship. Thus, an organization should be so composed and its activities be such that fellowship among the members plays a material part in the life of the organization in order for it to come within the meaning of the term "club".

The evidence submitted shows that fellowship does not constitute a material part of the life of your organization and that your principal activity is the rendering of commercial services to your members.

It is, accordingly, held that you are not a club "organized and operated exclusively for pleasure, recreation and other non-profitable purposes", within the meaning of section 101(9) of the Internal Revenue Code or the corresponding sections of prior revenue acts, and, therefore, are not entitled to exemption under those sections. Furthermore there is no other provision of law under which an organization of your character can be held to be exempt from Federal income tax.

[fol. 185] Bureau rulings of June 11, 1934 and July 5, 1938 are hereby revoked.

In view of all the facts and circumstances in your case it is held, with the approval of the Secretary of the Treasury, that you will not be required to file income tax returns for years beginning prior to January 1, 1943. You are, however, required to file returns for the year 1943 and subsequent years.

Thereafter the petitioner filed income and excess profits tax returns for the calendar years 1943 and 1944 under protest on the ground that it was exempt from tax.

### Opinion

In its petition, the petitioner assigned as error the respondent's determination that it was not exempt from tax for the years 1943 through 1947 under the provisions of

section 101(9) of the Internal Revenue Code.<sup>1</sup> On brief, petitioner states that in view of the decisions in *Chattanooga Automobile Club*, 12 T. C. 967, affd. 182 F. 2d 551; *Keystone Automobile Club*, 12 T. C. 1038, affd. 181 F. 2d 402; and *Automobile Club of St. Paul*, 12 T. C. 1152, it concedes that it was not exempt from tax for taxable years ending after July 16, 1945, the date on which the respondent revoked his previous rulings holding that petitioner was exempt from tax. The petitioner makes no contention that during 1943 and 1944 it was in fact and in law an organization of the class contemplated by section 101(9) of the Code and as such was exempt from taxation for those years. Therefore, we must assume that during those years the petitioner was not an exempt organization under the provisions of that section. However, on other grounds, the petitioner contends that by [fol. 186] having established its tax exempt status in the manner provided by respondent's regulations, and there having been no change in its character, it is entitled under the law to retain its established tax-exempt status for all taxable years ending before the year in which the respondent revoked his prior rulings as to its status. The grounds so relied on are that respondent's rulings of June 11, 1934, and July 5, 1938, show that it had established its right to exemption; that under the respondent's regulations,<sup>2</sup> relating to

<sup>1</sup> Sec. 101. Exemptions from Tax on Corporations.

The following organizations shall be exempt from taxation under this chapter—

• • • • •

(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

<sup>2</sup> Regulations 103, Sec. 19.101-1 \* \* \*

• • • • •

When an organization has established its right to exemption, it need not thereafter make a return of income or any further showing with respect to its status under the law, unless it changes the character of its organization or opera-

section 101 of the Code when it established its right to exemption it was not thereafter required to make a return of income or any further showing with respect to its status unless it changed its organization, operations or purposes for which created and that no such changes occurred; that under the principle applied in *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U. S. 110, the foregoing regulations having been of long standing acquired the force and effect of law by reason of the successive reenactments in the various revenue acts and the Code of provisions corresponding to section 101 of the Code; and that, accordingly, respondent's authority to revoke his prior rulings did not extend to a taxable year prior to that in which the revocation is made where the revocation is not based on a change made by the taxpayer in its organization, operations or purpose of creation.

The petitioner's contentions present the question of whether the regulations relied on by petitioner were intended to have the meaning attributed to them by the [fol.187] petitioner. In *Southern Maryland Agricultural Fair Association*, 40 B. T. A. 549, we had occasion to consider the meaning and effect of such regulations. In that case the Commissioner issued a ruling in 1924 holding that the taxpayer was exempt from tax. Believing that the ruling relieved it from the duty of filing returns, the taxpayer did not file any returns for the years 1923 through 1935. Early in 1937 the Commissioner reversed the ruling made in 1924 and held that the taxpayer was not and never had been exempt and notified the taxpayer accordingly. He also determined deficiencies against the petitioner for the years 1921 through 1935. There the applicable regulations as to

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tions or the purpose for which it was originally created. \* \* \* Collectors will keep a list of all exempt corporations, to the end that they may occasionally inquire into their status and ascertain whether or not they are observing the conditions upon which their exemption is predicated.

• • • • •  
All the regulations from Regulation 33, issued under the Revenue Act of 1916, to Regulations 103, issued under the Code, have contained provisions substantially identical with the foregoing.

corporations establishing exemption and the lack of necessity thereafter for filing returns were substantially the same as the regulations involved here. Two questions were presented, namely, whether the 1924 ruling and the applicable regulations excused the taxpayer from filing returns for the years 1923 through 1935 and whether the Commissioner had authority to reverse the 1924 ruling. In deciding both questions adversely to the taxpayer, we stated that although the Commissioner could not change the law by regulations, he could make reasonable regulations to assist him in administering the act and deciding whether a particular corporation was or was not exempt by statute. We concluded that was what he had done by the regulations there involved and held that such regulations were intended to be and were administrative, not legislative. Further, we stated that the inference should not be drawn from the regulations that the respondent thereby intended to write the limitation provisions of the revenue acts words which would provide a different period of limitations from that provided in the revenue acts for the benefit of those corporations which he might erroneously conclude were exempt. We held that the Commissioner could not thus change the law if he so desired.

Considering the petitioner's contentions here in the light of what was said in the *Southern Maryland Agricultural Fair Association* case, we must conclude that the regulations here relied on were not intended to, and did not, in any way modify or change the provisions of the revenue acts and the Code relating to exempt organizations. Or- [fol. 188] ganizations that were actually exempt were made so by the provisions of the revenue acts and the Code. They were not required to file any returns and the Commissioner could not change their status by regulations. Organizations not coming within the provisions of the revenue acts and the Code relating to exempt organizations were not exempt and the regulations in question neither purported to, nor could make them exempt.

In the *Reynolds Tobacco Co.* case, the question for decision was whether gain accruing to a corporation from the purchase and resale of its own shares constituted gross income within the meaning of section 22(a) of the Revenue Act of 1928. Under the Revenue Act of 1928, the Commis-



sioner issued a regulation to the effect that a corporation realized no gain or loss from the purchase or sale of its own stock. At least from 1920 such administrative construction was uniform with respect to each of the revenue acts from that of 1913 through 1932. In May 1934 the regulation was amended to provide that where a corporation deals in its own share- as it might in the shares of another corporation, the resulting gain or loss was to be computed in the same manner as though the corporation were dealing in the shares of another. In 1929 the taxpayer sold certain of its shares acquired in that and prior years for a sum which exceeded cost. The Court concluded that since successive revenue acts had reenacted without alteration the definition of gross income as it stood in the acts of 1913, 1916 and 1918, Congress must be taken to have approved the administrative construction represented by the earlier regulation and thereby to have given it the force of law. Accordingly, the Court held that the amended regulation was not to be applied retroactively and that the taxpayer's tax liability for 1929 was to be determined under the regulation in force in 1929.

Clearly the situation here is different from that presented in the *Reynolds Tobacco Co.* case. The regulations involved there were legislative in nature in that they purported to determine what did or did not constitute gain or loss. The regulations here involved were administrative in character and in nowise purported to determine whether [fol. 189] any organization was or was not exempt. Accordingly, the holding in the *Reynolds Tobacco Co.* case does not have here the effect contended for by petitioner.

The petitioner also had made some argument to the effect that it has been discriminated against by the respondent in that here the respondent has determined deficiencies against it for the years 1943 and 1944 when notice of revocation of respondent's ruling of exemption was not sent until during 1945, whereas in the case of all other automobile clubs, the respondent has not determined a deficiency for any year earlier than that in which notice of revocation of his ruling of exemption was sent. So far as appears from the reports of the cases mentioned in this connection by petitioner, the respondent has made all revocations of his rul-

ings of exemption effective for the taxable years, calendar or fiscal, beginning in 1943. Since the respondent has not determined a deficiency against the petitioner for any year earlier than the calendar year 1943, we cannot find that petitioner has been discriminated against.

The respondent is sustained on this issue.

## Issue 2. Period Limitations

### Findings of Fact

On August 12, 1944, the petitioner filed with the collector for the district of Michigan, for the calendar year 1943, Treasury Department Form 990, an annual return which section 54(f) of the Internal Revenue Code<sup>3</sup> required should be filed by organizations exempt from income tax under section 101 of the Internal Revenue Code, or under corresponding provisions of prior revenue acts. On May 17, 1945, the petitioner filed a like form for the calendar year 1944. The foregoing returns showed gross income and receipts and disbursements and contained statements of assets and liabilities at the end of the respective years. [fol. 190] Such returns were not the returns required by section 52(a) of the Code from corporations subject to tax under Chapter 1 of the Code and did not provide sufficient data from which the petitioner's income and excess profits tax liability for 1943 and 1944 could be computed and assessed.

The petitioner's income and excess profits tax returns (Forms 1120 and 1121) for the calendar years 1943 and 1944 were filed on October 22, 1945. On August 25, 1948, petitioner and the respondent entered into consents which provided that the amounts of any income, excess profits or war profits taxes due for the taxable years ended December 31, 1943 and December 31, 1944, could be assessed at any time on or before June 30, 1949. On May 23, 1949, they executed consents which provided that such taxes for said years could be assessed at any time on or before June

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<sup>3</sup> Section 54(f) was added to the Code by section 117 of the Revenue Act of 1943 and was made applicable for taxable years beginning after December 31, 1942.

30, 1950. The notice of deficiency forming the basis of this proceeding was mailed to the petitioner on February 20, 1950.

### Opinion

The petitioner contends that even if it be determined that the respondent had authority to determine deficiencies against it for 1943 and 1944, we must conclude that the notice of deficiency was not sent within the applicable periods of limitations and that assessments of the deficiencies for those years are barred because the periods of limitations began to run prior to the filing of the income and excess profits tax returns on October 22, 1945. The petitioner concedes that under section 275(a) of the Code the period of limitations begins to run from the filing of the return. However, it contends that where a taxpayer is not under a duty to file a return for a given year, the period of limitations for such year begins to run from the [fol. 191] date the return should have been filed if there had been a duty to file it. In support of its position the petitioner relies on *Balkan Nat. Ins. Co. v. Commissioner*, 101 F. 2d 75, and *Stockstrom v. Commissioner*, 190 F. 2d 283.

In the *Balkan Nat. Ins. Co.* case, the Alien Property Custodian seized all of the records of a foreign corporation prior to the time the return for 1918 was due and the records were never returned to the corporation. The corporation never filed any return. It was held that the statute had run in 1934 against assessment of a deficiency for 1918 since the Government had made it impossible for the corporation to file any return for 1918. Obviously the present case is not like that case nor is it as strong factually for the taxpayer. The petitioner at all times was in possession

#### \* Sec. 275. Period of Limitation upon Assessment and Collection.

Except as provided in section 276—

(a) General Rule.—The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

of its records. In the *Stockstrom* case, the donor of gifts to trusts filed a gift tax return for 1936 and paid the tax thereon computed in accordance with the Commissioner's then outstanding ruling as to exclusions for gifts to trusts. Thereafter in 1937, and on the basis of certain court decisions, the Commissioner reversed his ruling as to exclusions for gifts to trusts. On the basis of the new ruling the respondent refunded the donor's gift tax paid for 1936 and approved the exclusions taken, on the basis of the new ruling, in the donor's 1937 gift tax return. On the basis of the new ruling, the donor was not liable for gift tax for 1938 and filed no return for that year. In 1941 a revenue agent obtained the facts and figures as to gifts made to trusts in 1938. He and another employee of the Bureau considered the liability of the donor for gift tax for 1938 and the donor was informed that there was no liability. In 1948, and on the basis of a Supreme Court decision rendered in March 1941, the respondent reversed his 1937 ruling and determined a deficiency in gift tax for 1938. The Court concluded that when the facts and figures as to the donor's gifts in 1938 were obtained in 1941, it was the collector's duty promptly to file a return for the donor for 1938, that such duty should not have been postponed for years in order to prevent the statute of limitations from running and held that assessment of the deficiency was barred. Clearly the instant case is distinguishable on its facts from the *Stockstrom* case.

[fol. 192] Here, the respondent on July 16, 1945, and in the same notice in which he determined that the petitioner was not exempt from tax and in which he revoked his prior rulings, requested the petitioner to file income tax returns for 1943 and 1944. So far as shown no revenue agent or other employee of the Bureau theretofore had made an investigation of the petitioner's affairs and obtained from petitioner data upon which to compute its income tax liability for those years.

Because of factual differences we are unable to find that the decisions in the *Balkan Nat. Ins. Co.* and *Stockstrom* cases are applicable here.

In *Southern Maryland Agricultural Fair Association, supra*, we considered the question of whether an erroneous



ruling by respondent (subsequently revoked) that a corporation was exempt from tax was effectual, with respect to taxable years prior to that of revocation, for starting the running of the statutory period of limitations and held that it was not. We think our holding there is applicable here.

The petitioner further urges that the periods of limitations began to run for 1943 and 1944 when it filed Forms 990 for the respective years. It contends that such forms contained sufficient data from which its income and excess profits tax liability for such years could be computed and assessed and that, consequently, such forms are to be considered as the returns contemplated by section 275(a) of the Code. From a comparison of Forms 990 filed by the petitioner for 1943 and 1944 with the income and excess profits tax returns filed for those years, we have found that the Forms 990 do not contain sufficient data from which the petitioner's income and excess profits taxes for those years could be computed and assessed. In a similar situation in *John Danz*, 18 T. C. 454 (on appeal, C. A. 9), we held that the Forms 990 were not sufficient to start the running of the period fixed by section 275(a) of the Code for assessment and collection of the tax due. On authority of our holding there, the contention of the petitioner is denied.

[fol. 193] Issue 3. Inclusion of Membership Dues in Income  
Findings of Fact

The petitioner collected dues from its members in the following amounts during the indicated years:

1943.....	\$2,126,437.50
1944.....	2,237,017.04
1945.....	2,430,543.97
1946.....	2,744,897.65
1947.....	2,914,028.76

The money collected by petitioner from its members as dues was deposited by it in a general bank account which it maintained with the National Bank of Detroit. This was an account in which all money received by petitioner was deposited. At no time was the money received by petitioner as dues segregated from its general funds or deposited in

a bank account other than the one general account in which all of its other receipts were deposited.

Upon receipt of a member's dues, the petitioner set aside \$1 to pay for a subscription to a magazine called "Motor News." If the members were a new member and had been brought in by one of the petitioner's solicitors or employees a commission of \$2.50 was paid to the person bringing in the member.

Prior to March 15, 1947, petitioner's by-laws provided that a member whose annual dues remained unpaid for 30 days after becoming due was subject to suspension from the privileges offered by petitioner. If a member failed to pay his dues within 30 days after notice of his suspension, he ceased to be a member of petitioner and became liable for the payment of two months' dues as well as the expense of collecting them. Any member who resigned forfeited all his rights and interests in the petitioner's property and assets. A new by-law effective March 15, 1947, provided for the termination of membership by death, resignation, non-payment of dues, or upon other reasonable [fol. 194] cause by written notice to the member, or upon order of petitioner's board of directors, and for the sending by petitioner with the notice of termination a check for the unused portion of annual dues as determined by petitioner's board of directors. Petitioner's board of directors has never adopted a resolution fixing the amount, or providing a formula for ascertaining the amount, of a refund to be paid to persons who ceased to be members of the petitioner.

Although prior to March 15, 1947, the petitioner's by-laws did not provide for the refunding of a portion of annual dues upon the termination of a membership, it had been petitioner's policy since about 1924 to refund a portion of the unearned dues upon the termination of a membership. However, there was no "iron-bound" rule under which the amounts of such refunds were computed.

Membership dues are paid in advance for one year. When a member's dues are received, the petitioner credits the amount thereof to an account carried as a liability account and designated "Unearned Membership Dues." During the first month of membership and each of the following

11 months, one-twelfth of the amount paid is credited to an income account designated "Membership Income". The foregoing method of accounting with respect to membership dues has been followed by petitioner since 1934 and the income from membership dues reported by petitioner in its returns for 1943 through 1947 was ascertained by petitioner under that method.

The petitioner's returns for each of the years 1943 through 1947 was prepared on the basis of a calendar year and on the accrual method of accounting.

The respondent determined that the entire amount of membership dues received by petitioner during the years involved herein should be reported as income for the year in which received.

[fol. 195]

#### Opinion

Under the method employed by petitioner in accounting for, and reporting, income from membership dues, such dues are treated as earned ratably over the period of the membership and each month one-twelfth of a member's annual dues is included in petitioner's income as representing income actually earned. That portion of a member's dues received in a given taxable year which, under the petitioner's method, is not included in income for the year in which received, is deferred and included in income in the following year. The respondent determined that the entire amount of membership dues received during a taxable year is to be included and reported in income for the year in which received. In effect the petitioner claims that because the income as determined by respondent embraces unearned income and also embraces receipts which may subsequently be subject to refund, the respondent's determination fails properly to reflect income.

In *Brown v. Helvering*, 291 U. S. 193, affirming 22 B. T. A. 678, the taxpayer was a general insurance agent and kept books on the accrual basis. During the taxable years there involved the taxpayer received, without restrictions as to their use and disposition by it, commissions on fire insurance policies written for one, three and five year terms. It was held that the entire amount of commissions received

in the respective taxable years constituted income to the taxpayer for the years in which received even though they were received before they were earned and some portion of them might have to be refunded in the future.

In *South Tacoma Motor Co.*, 3 T. C. 411, a taxpayer on the accrual basis attempted to defer certain sums received from the sale of coupon books which entitled the purchaser to services which might be demanded and performed after the year of sale, and reported as gross income only that portion of the sums received which were allocable to the services it performed during the taxable year. In support of its deferment of income the taxpayer contended that the nature of its contract was such that it would have to perform many of the services required by the contract subsequent to the taxable year in which the coupon book was sold. We held that the entire amount received from the sale of the coupon books was income for the taxable year in which received.

In *Your Health Club, Inc.*, 4 T. C. 385, a taxpayer on the accrual basis received certain cash and accrued amounts within the taxable year under contracts obligating it to perform services extending beyond the taxable year. We there held that the entire amount constituted income in the year when received or accrued despite the fact that a part of the income was earned during the following year.

In view of the decisions in the foregoing cases, we hold that the entire amount of membership dues received by petitioner during the years here involved constituted income for the year in which received.

Since the entire amount of membership dues was income for the year in which received and since the petitioner's method of accounting for income did not take cognizance of the full amount thereof for such year, it is apparent that the petitioner's method of accounting did not clearly reflect its income. Accordingly, the respondent did not err in determining that petitioner's method of accounting did not clearly reflect income, and in further determining that the entire amount of membership dues received during the taxable years in question constituted income for the years in which received.



[fol. 197]

## Issue 4. Depreciation

## Findings of Fact

Prior to December 31, 1936, petitioner capitalized on its books additions to furniture and fixtures accounts and the leasehold improvements and building alterations account and periodically made provision for depreciation and amortization with respect thereto. At December 31, 1936, the petitioner charged to its surplus account the undepreciated balances of those accounts by journal entries summarized as follows:

## Cost of assets at December 31, 1936:

Office furniture and fixtures—Detroit	\$ 32,894.67	
Office furniture and fixtures—Branches	20,925.23	
Leasehold improvements and building alterations	177,025.73	\$230,845.63

## Less accumulated reserves for depreciation and amortization to December 31, 1936:

Office furniture and fixtures—Detroit	\$ 17,918.08	
Office furniture and fixtures—Branches	12,264.58	
Leasehold improvements and building alterations	177,025.73	207,208.39

Undepreciated balance charged to surplus		\$ 23,637.24
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Subsequent to December 31, 1936, the petitioner charged to expense the cost of furniture and fixtures and building alterations. There were no leasehold improvements subsequent to that date.

Both prior to December 31, 1936, and subsequent thereto petitioner capitalized on its books additions to its auto-[fol. 198] mobiles and trucks account and periodically made provision for depreciation with respect thereto on the basis of a 4-year life.

At January 1, 1943, petitioner had depreciable and amortizable assets, the investment in which (except for automobiles and trucks) was not reflected in its accounts as of that date, such investment having been charged off or expensed previously. The time of acquisition, the cost, the amount of depreciation or amortization sustained to January 1, 1943, the cost less sustained depreciation or amortization to January 1, 1943, and the remaining lives from

January 1, 1943, of these assets are as set forth in the following schedules:

### OFFICE FURNITURE AND FIXTURES

Year	Cost	Depreciation sustained to Jan. 1, 1943	Cost, less depreciation sustained to Jan. 1, 1943	Remaining life at Jan. 1, 1943 in years
1928	\$ 9,133.15	\$ 8,829.02	\$ 304.13	1½
1929	6,179.28	5,561.35	617.93	1½
1930	13,159.95	10,966.19	2,193.76	2½
1931	9,393.81	7,201.95	2,191.86	3½
1932	2,192.79	1,534.95	657.84	4½
1933	1,214.11	768.93	445.18	5½
1934	3,611.72	2,046.65	1,565.07	6½
1935	5,531.43	2,765.72	2,765.73	7½
1936	7,295.15	3,260.99	4,034.16	8½
1937	19,724.59	7,232.42	12,492.17	9½
1938	18,672.45	4,356.28	14,316.17	10½
1939	17,420.39	5,226.12	12,194.27	11½
1940	17,772.62	2,962.16	14,810.46	12½
1941	25,035.77	2,503.58	22,532.19	13½
1942	13,897.64	463.25	13,434.39	14½

Total Jan. 1, 1943	\$170,234.87	\$65,679.56	\$104,555.31
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[fol. 199]

### AUTOMOBILES AND TRUCKS

Description	Date acquired	Cost	Depreciation sustained to Jan. 1, 1943	Cost, less depreciation sustained to Jan. 1, 1943	Remaining life at Jan. 1, 1943 in months
Ford Sedan	4/40	\$ 675.00	\$ 464.06	\$ 210.94	15
Special Trailer	6/40	720.00	465.00	255.00	17
Plymouth Coupe	7/40	798.25	498.91	299.34	18
Chrysler Brougham	12/40	926.91	482.76	444.15	23
Ford '41 E. R. S. Truck Chassis	11/40	790.00	427.92	362.08	22
Plymouth Panel Del. Truck	3/41	677.71	310.61	367.10	26
Special Body	1/41	275.00	137.50	137.50	24
Plymouth 2 Dr. Sedan	3/41	766.32	351.23	415.09	26
Plymouth Panel Delivery	3/41	784.86	359.72	425.14	26
Chrysler C-30 Six Pass. Sedan	3/41	1,540.40	706.01	834.39	26
Mercury Coupe	5/41	988.80	411.99	576.81	28
Chrysler C-28 DeLuxe Brougham	6/41	958.98	379.59	579.39	29
Pontiac DeLuxe 6 4-Dr.	6/41	811.35	321.16	490.19	29
Ford DeLuxe Coupe	7/41	812.49	304.68	507.81	30
Pontiac—(used)	6/42	800.00	116.67	683.33	41
Plymouth DeLuxe Coupe (used)	9/42	750.00	62.50	687.50	44
		\$13,076.07	\$5,800.31	\$7,275.76	

[fol. 200]

## LEASEHOLD IMPROVEMENTS

Year Made	Cost	Depreciation sustained to Jan. 1, 1943	Cost, less depreciation sustained to Jan. 1, 1943	Remaining life at Jan. 1, 1943	Years Months
1926	\$ 96,677.35	\$47,855.29	\$48,822.06	16	10
1927	54,379.07	25,286.27	29,092.80	17	10
1931	1,036.00	357.42	678.58	21	10
	<u>\$152,092.42</u>	<u>\$73,498.98</u>	<u>\$78,593.44</u>		

## BUILDING ALTERATIONS

Year Made	Cost	Depreciation sustained to Jan. 1, 1943	Cost, less depreciation sustained to Jan. 1, 1943	Remaining life at Jan. 1, 1943	Years Months
1927	\$ 491.00	\$ 228.31	\$ 262.69	17	10
1931	1,233.00	425.38	807.62	21	10
1936	190.00	37.05	152.95	26	10
1937	16,022.73	2,643.75	13,378.98	27	10
1938	5,877.67	793.49	5,084.18	28	10
	<u>\$23,814.40</u>	<u>\$4,127.98</u>	<u>\$19,686.42</u>		

## SPECIAL ASSESSMENT FOR WIDENING BAGLEY AVENUE

Date	Cost	Amortization sustained to Jan. 1, 1943	Cost, less amortization sustained to Jan. 1, 1943	Remaining life at Jan. 1, 1943
Sept. 1934	\$5,236.77	\$538.75	\$4,698.02	72 yrs., 8 mos.

During the years 1943 to 1947, inclusive, there were no additions to the foregoing property accounts nor any retirements therefrom except as set forth in the following table:

[fol. 201]

Years	Furniture and Fixtures Additions	Automobiles and Trucks Additions	Retirements
1943	\$17,407.46	\$ 6,535.98	\$ 988.80
1944	7,688.23	—0—	—0—
1945	11,636.43	1,906.25	—0—
1946	25,233.84	2,549.16	2,953.51
1947	36,765.03	29,769.17	7,230.61

## Opinion

The principal controversy under this issue is as to the basis upon which depreciation or amortization allowances are to be computed with respect to the properties set out in our findings and which were used by petitioner in its business during some or all of the years 1943 through 1947.

In determining the deficiencies the respondent allowed depreciation or amortization deductions computed on the basis of cost as adjusted for depreciation or amortization during the period of petitioner's ownership prior to January 1, 1943. The petitioner takes the position that it had a tax-exempt status for all years prior to 1943, that the respondent's method of determining the allowances was erroneous, and that for the years 1943 through 1947 it was entitled to depreciation or amortization deductions computed on the basis of cost without adjustment for depreciation or amortization occurring prior to January 1, 1943. Pertinent provisions of the Code as set out below.<sup>5</sup>

(a) Basis for Depreciation.—The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property.

. . . . .

#### Sec. 113. Adjusted Basis for Determining Gain or Loss.

(a) Basis (Unadjusted) of Property.—The basis of property shall be the cost of such property; \* \* \*

(b) Adjusted Basis.—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

(1) General Rule.—Proper adjustment in respect of the property shall in all cases be made—

. . . . .

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent allowed (but not less than the amount allowable) under this chapter or prior income tax laws. Where for any taxable year prior to the taxable year 1932 the depletion allowance was based on discovery value or a

<sup>5</sup> Sec. 114. Basis for Depreciation and Depletion.



percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(C) in respect of any period prior to March 1, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained:

[fol. 202] From the record before us we are unable to conclude, as petitioner contends, that it had an exempt status for all years prior to 1943. While it is true that by his rulings in 1934 and 1938 the respondent held that the petitioner was entitled to exemption under the Revenue Act of 1936 and prior revenue acts, in 1945 he ruled that the petitioner was not entitled to exemption under the Code or prior revenue acts and revoked the 1934 and 1938 rulings. Since the 1945 ruling cancelled the earlier ones, any presumption as to the correctness of the earlier rulings was thereby removed. So far as shown the petitioner was not at any time during its existence within that class of organizations exempted by the sections of the revenue acts under which the respondent in 1934 and 1938 ruled that it was exempt or within that class of organizations exempted by the corresponding sections of later revenue acts and the Code. Therefore, we are without any basis, factual or otherwise, upon which to find that the petitioner ever had an exempt status [fol. 203] at anytime. Therefore, it is apparent that the petitioner has rested its position on a ground not shown to have ever existed. So far as appears, the petitioner has always been subject to tax and it is not apparent why for purposes of computing the depreciation allowances for the years 1943 through 1947 the assets in question had any different basis from that provided in the Code. Furthermore, the basis proposed by petitioner would burden income for 1943 and later years by requiring the allowances in those years for all depreciation that actually had occurred prior to January 1, 1943. The petitioner cites no case to support such action and we have not found any.

In 1932, in G.C.M. 10857, C.B. XI-2, page 105, it was

held under the provisions of sections 111(a) and (b) and 113(b) of the Revenue Act of 1928 that where an organization, which was shown to have been exempt under the Revenue Act of 1928 and all prior revenue acts, derived taxable gain in 1931 from the sale of its property, the basis should not be reduced by the amount of depreciation sustained with respect to the property for the period during which the organization occupied an exempt status. In 1952, in G.C.M. 27491, C.B. 1952-2, page 221, G.C.M. 10857 was reconsidered and revoked, and it was held that in the case of an organization which was exempt from tax for a prior period and subsequently became subject to tax, in computing the amount of gain or loss from the sale or exchange of property held during all or part of the period it was exempt, the basis should be reduced by the amount of depreciation sustained with respect to the property for the period held while the taxpayer was exempt. In I.T. 4106, C.B. 1952-2, page 130, it was held that under the authority contained in section 3791(b) of the Internal Revenue Code, the provisions of G.C.M. 27491 revoking G.C.M. 10857 would be applicable only to sales occurring in taxable years beginning after December 31, 1950.

The petitioner urges that the holding in G.C.M. 10857 sustains its position that its depreciation or amortization deductions for the years 1943 through 1947 are to be computed on the basis of cost without adjustment for depreciation or amortization occurring prior to January 1, 1943, and that the holding in I.T. 4106 gives the petitioner the benefit of G.C.M. 10857 for all the foregoing years. G.C.M. 10857 involved an organization which was shown to have been exempt during the years in which the depreciation there in question occurred. No such showing has been made with respect to petitioner. Because of this factual difference, G.C.M. 10857 would not aid the petitioner even though it be conceded that it correctly interpreted the law. Having reached this conclusion, it becomes unnecessary to consider petitioner's contention as to the benefit conferred by the holding in I.T. 4106.

The petitioner contends that if it is not entitled to the use of a basis of cost without adjustment for depreciation or amortization prior to January 1, 1943, then it is entitled

to use as its basis the fair market value of the properties on January 1, 1943. The basis here contended for does not come within the provisions of the Code, *supra*, defining basis. Consequently, the contention of the petitioner must be denied.

In view of what has been said above, it is our opinion that the petitioner's basis for computing depreciation on the properties here involved for the years in question is the same as if the petitioner always had been held to be a corporation subject to tax.

An issue as to the rate of depreciation allowable for the years in controversy with respect to two branch office buildings acquired by petitioner in 1942 has been settled by a stipulation that a rate of 2 per cent is allowable.

An issue as to the amount of the deduction allowable for the years in question as amortization of the petitioner's investment in a leasehold interest acquired by petitioner in 1926 has been disposed of by a stipulation that an amount of \$3,089.89 is allowable.

Reviewed by the Court.

*Decision will be entered under Rule 50.*

[fol. 205] BEFORE THE TAX COURT OF THE UNITED STATES

[Title omitted]

EXCERPTS FROM PETITIONER'S BRIEF

(Pages 32 and 33)

ARGUMENT

Preliminary

Petitioner contends that no tax may be assessed against it for the years 1943 and 1944 for the reason, first, that it was exempt from taxation during those years, and secondly and alternatively, that the statute of limitations bars the assessment of any tax liability which may have existed for

those years. The following argument first discusses these issues of tax-exemption and the statute of limitations, which do not involve the asserted deficiencies for the years 1945, 1946 and 1947, since the major portion of the asserted deficiencies for all years will be disposed of if the petitioner prevails on these issues applicable only to 1943 and 1944. If the petitioner is not subject to tax for the years 1943 and 1944, there is no need for the Court to consider the issues and arguments as to the amount of the allowable carry-backs to 1943 and 1944 of net operating losses and unused excess profits credits for the years subsequent to 1944.

[fol. 206]    **Petitioner is Exempt from Taxation  
for the Years 1943 and 1944**

In its petition to this Court, petitioner alleged it was exempt from taxation, under the provisions of section 101(9) of the Internal Revenue Code, for all taxable years involved in this proceeding. Petitioner now concedes, in view of the decisions of this Court in *Chattanooga Automobile Club*, 12 T. C. 967 (1949), aff'd 182 F. (2d) 551 (6th Cir. 1950), *Keystone Automobile Club*, 12 T. C. 1038 (1949), aff'd 181 F. (2d) 402 (3rd Cir. 1950), and *Automobile Club of St. Paul*, 12 T. C. 1152 (1949) that it is not exempt from taxation for taxable years ending after July 16, 1945, the date on which the Commissioner revoked his previous rulings holding that petitioner was exempt from taxation.

Petitioner submits, upon application of the principle enunciated by the Supreme Court in its decision in *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U. S. 110, 83 L. Ed. 536 (1939), that the petitioner must be held exempt from taxation for the years 1943 and 1944 and that the Commissioner's attempt on July 16, 1945 to revoke retroactively the tax-exempt status of petitioner was without legal effect.

On June 11, 1934, the Commissioner of Internal Revenue in a letter to petitioner ruled that petitioner was exempt from taxation under section 103(9) of the Revenue Act of 1932, which is identical in language with the existing provisions of section 101(9) of the Code. In the ruling of July 11, 1934, the Commissioner, after advising that petitioner was exempt from taxation, further ruled as follows: /



[fol. 206a] IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 12,247

AUTOMOBILE CLUB OF MICHIGAN, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

On Petition for Review of the Decision of the Tax Court  
of the United States

APPENDICES TO RESPONDENT'S BRIEF—Filed June 17, 1955

[File Endorsement Omitted]

[fols. 207-208] BEFORE THE TAX COURT OF THE UNITED STATES  
APPENDIX A

Internal Revenue Code of 1939:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as  
deductions:

(n) *Basis for Depreciation and Depletion.*—The basis  
upon which depletion, exhaustion, wear and tear, and  
obsolescence are to be allowed in respect of any prop-  
erty shall be as provided in section 114.

(26 U.S.C. 1952 ed., Sec. 23)

SEC. 41. GENERAL RULE.

The net income shall be computed upon the basis of  
the taxpayer's annual accounting period (fiscal year  
or calendar year, as the case may be) in accordance  
with the method of accounting regularly employed in

keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. . . .

(26 U.S.C. 1952 ed., Sec. 41.)

#### SEC. 42. PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.

(a) [As amended by Sec. 114 of the Revenue Act of 1941, c. 412, 55 Stat. 687] *General Rule*.—The amount of all items of gross income shall be included in the gross income for the taxable year in which received by [fol. 209] the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. . . .

(26 U.S.C. 1952 ed., Sec. 42.)

#### SEC. 52. CORPORATION RETURNS.

(a) *Requirement*.—Every corporation subject to taxation under this chapter shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made

by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

(26 U.S.C. 1952 ed., Sec. 52.)

#### SEC. 54. RECORDS AND SPECIAL RETURNS.

(a) *By Taxpayer.*—Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the [fol. 210] approval of the Secretary, may from time to time prescribe.

(b) *To Determine Liability to Tax.*—Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this chapter.

(f) [As added by Sec. 117(a) of the Revenue Act of 1943, c. 63, 58 Stat. 21] Every organization, except as hereinafter provided, exempt from taxation under section 101 shall file an annual return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe. . . .

(26 U.S.C. 1952 ed., Sec. 54.)

## SEC. 101 EXEMPTIONS FROM TAX ON CORPORATIONS.

The following organizations shall be exempt from taxation under this chapter—

(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, [fol. 211] no part of the net earnings of which inures to the benefit of any private shareholder;

(26 U.S.C. 1952 ed., Sec. 101.)

## SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; \* \* \*

(b) *Adjusted Basis.*—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as herein-after provided.

(1) *General Rule.*—Proper adjustment in respect of the property shall in all cases be made—

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent allowed (but not less than the amount allowable) under this chapter or prior income tax laws. Where for any taxable year prior to the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if



computed without reference to discovery value or a percentage of income;

(26 U.S.C. 1952 ed., Sec. 113.)

[fol. 212] SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION.

(a) *Basis for Depreciation.*—The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property.

(26 U.S.C. 1952 ed., Sec. 114.)

SEC. 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

Except as provided in section 276—

(a) *General Rule.*—The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(26 U.S.C. 1952 ed., Sec. 275.)

SEC. 276. SAME—EXCEPTIONS.

(a) *False Return or No Return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) *Waiver.*—Where before the expiration of the time prescribed in section 275 for the assessment of the

tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in [fol. 213] writing made before the expiration of the period previously agreed upon.

(26 U.S.C. 1952 ed., Sec. 276.)

#### SEC. 3791. RULES AND REGULATIONS.

(b) *Retroactivity of Regulations or Rulings.*—The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

(26 U.S.C. 1952 ed., Sec. 3791.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

Sec. 29.52-1. *Corporation Returns.*—Every corporation not expressly exempt from tax must make a return of income, regardless of the amount of its net income. In the case of ordinary corporations, the return shall be on Form 1120. . . .

Sec. 29.101-1 [As amended by T. D. 5381, 1944 Cum. bull. 188, 189]. *Proof of Exemption Prior to January 1, 1943.—Annual Returns for Accounting Periods Beginning Prior to January 1, 1943.*—A corporation is not exempt merely because it is not organized and operated for profit. In order to establish its exemption it is necessary that every organization claiming exemption file with the collector for the district in which is located the principal place of business or principal office of the organization an affidavit or a questionnaire as set forth below. An organization claiming exemption under sec-

tion 101 (1), (3), (4), except a bona fide credit union, (6), (7), (8), (9), (10), (12), (14), or (16) shall file the form of questionnaire appropriate to its activities, [fol. 214] filled out in accordance with the instructions on the form or issued therewith. Copies of the following questionnaire forms may be obtained from any collector: For corporations claiming exemption \* \* \* under section 101(9), Form 1025 \* \* \*. To each such affidavit or questionnaire shall be attached a copy of the articles of incorporation, declaration of trust, or other instrument of similar import, setting forth the permitted powers or activities of the organization, the by-laws or other code of regulations, and the latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization. An organization claiming exemption under section 101(5), (6), except organizations organized and operated exclusively for religious purposes, (7), (8), (9), or (14) shall also file with the other information specified herein a return of information on Form 990 relative to the business of the organization for the last complete year of operation \* \* \*

The collector, upon receipt of the affidavit, or questionnaire, and other papers, will examine them as to completeness and will forward completed documents to the Commissioner for decision as to whether the organization is exempt. In addition to the information specified herein, the Commissioner may require any additional information deemed necessary for a proper determination of whether a particular organization is exempt under section 101, and when deemed advisable in the interest of an efficient administration of the internal revenue laws he may in the cases of particular types of organizations provide additional questionnaires or otherwise prescribe the form in which the proof of exemption shall be furnished.

When an organization (other than a mutual insurance company) has established its right to exemption, it need not thereafter make a return of income or any further

showing with respect to its status under the law, unless [fol. 215] it changes the character of its organization or operations or the purpose for which it was originally created, except that every organization exempt or claiming exemption under section 101(5), (6), except organizations organized and operated exclusively for religious purposes, (7), (8), (9), or (14) shall file annually returns of information on Form 990 with the collector for the district in which is located the principal place of business or principal office of the organization \* \* \* .

Collectors will keep a list of all organizations held to be exempt to the end that they may occasionally inquire into their status and ascertain whether or not they are observing the conditions upon which their exemption is predicated.

An organization which is exempt, under section 101 and the regulations thereunder, from filing returns of income is not, however, relieved from the duty of filing returns of information (see sections 147 and 148).

Sec. 29.101-2 [As added by T.D. 5381, *supra*]. *Proof of Exemption on or after January 1, 1943.—Annual Returns for Accounting Periods Beginning on or After January 1, 1943.—(a) Proof of exemption.*—An organization is not exempt from tax merely because it is not organized and operated for profit. In order to establish exemption it is necessary that every organization claiming exemption file with the collector for the district in which is located the principal place of business or principal office of the organization an affidavit or questionnaire as set forth below. An organization claiming exemption under section 101 (1), (3), (4), except a bona fide credit union, (6), (7), (8), (9), (10), (12), (14), or (16) shall file the form of affidavit or questionnaire appropriate to its activities, filled out in accordance with the instructions on the form or issued therewith. Copies of the following forms may be obtained from any collector: For organizations claiming exemption \* \* \* under section 101(9), Form 1025 \* \* \* . To each such affidavit or questionnaire shall be attached a copy of the articles of incorporation, dec-



[fol. 216] laration of trust, or other instrument of similar import, setting forth the permitted powers or activities of the organization, the by-laws or other code of regulations, and the latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization.

. . . . .

In addition to the information specifically called for by these regulations the Commissioner may require any additional information deemed necessary for a proper determination of whether a particular organization is exempt under section 101, and when deemed advisable in the interest of an efficient administration of the internal revenue laws he may in the cases of particular types of organizations provide additional questionnaires or otherwise prescribe the form in which the proof of exemption shall be furnished.

. . . . .

*(c) Collector's duties with respect to proof of exemption.*—The collector, upon receipt of the affidavit or questionnaire and other papers constituting the proof of exemption by an organization claiming exemption from tax under section 101, will forward completed documents to the Commissioner for decision as to whether the organization is exempt.

. . . . .

*(e) Requirement of annual returns.*—For accounting periods beginning after December 31, 1942, every organization exempt from tax under section 101, regardless of the amount or source of its income or receipts and irrespective of whether it is chartered by, or affiliated or associated with, any central, parent, or other organization, except organizations specifically exempted from filing annual returns by section 54(f) (see subsection (h) of this section), shall file annually with the collector for the district in which is located [fol. 217] the principal place of business or principal office of the organization a return of information on

Form 990 (revised May, 1944) specifically stating the items of gross income, receipts, and disbursements and such other information as may be prescribed by the Commissioner in the instructions on the form or issued by him therewith. . . .

(g) *Date for filing annual returns.*—The annual return of information, Form 990 (revised May, 1944), for accounting periods beginning after December 31, 1942, but ending prior to April 1, 1944, shall be filed on or before August 14, 1944, and for accounting periods beginning after December 31, 1942, but ending after March 31, 1944, shall be filed on or before the 15th day of the fifth full calendar month following the close of the period for which the return is required to be filed: . . .

(i) *Collector's records.*—Collectors will keep a list of all organizations held to be exempt from tax to the end that they may occasionally inquire into their status and ascertain whether or not they are (1) observing the conditions upon which their exemption is predicated, and (2) annually filing returns on Form 990 (revised May, 1944) if they are required to file such returns.

(j) *Records, statements, and other returns of tax-exempt organizations.*—An organization which has established its right to exemption from tax under section 101 and has also established that it is not required to file annually the return of information on Form 990 (revised May, 1944) shall immediately notify in writing the collector for the district in which is located its principal office of any changes in its character, operations, or purpose for which it was originally created.

Every organization which has established its right to exemption from tax, whether or not it is required to [fol. 218] file an annual return of information, shall submit such additional information as may be required by the Commissioner for the purpose of enabling him

to inquire further into its exempt status and to administer the provisions of section 54(f) and this section. For requirement as to keeping of permanent books of account or records, see section 29.54-1.

An organization which has established its right to exemption from tax under section 101, including an organization which is relieved under section 54(f) and these regulations from filing returns of income or annual returns of information, is not, however, relieved from the duty of filing other returns of information (see sections 147 and 148).

Sec. 29.101(9)-1. *Social Clubs*.—The exemption granted by section 101(9) applies to practically all social and recreation clubs which are supported by membership fees; dues, and assessments. If a club engages in traffic in agriculture or horticulture, or in the sale of real estate, timber, etc., for profit, such club is not organized and operated exclusively for pleasure, recreation, or social purposes. Generally, an incidental sale of property will not deprive the club of the exemption.

[fol. 219] BEFORE THE TAX COURT OF THE UNITED STATES

### APPENDIX B

AUTOMOBILE CLUB OF MICHIGAN, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 27988

DECISION—Entered December 11, 1953

Pursuant to the determination of this Court, as set forth in its Findings of Fact and Opinion, promulgated September 23, 1953, the parties filed an agreed computation for entry of decision. In accordance therewith, it is

ORDERED AND DECIDED: That there are deficiencies in income tax for the years 1943, 1944, 1945, 1946 and 1947 in the respective amounts of \$100,057.28, \$120,492.92, \$40,994.96, \$2,916.76 and \$2,006.44; that there is a deficiency in excess

profits tax for the year 1943 in the amount of \$24,991.45; and that there is no deficiency in excess profits tax for the year 1944.

/S/ Norman O. Tietjens,  
Judge

[fol. 220]. BEFORE THE TAX COURT OF THE UNITED STATES  
/EXHIBIT 13

TAXPAYER'S INCOME AND DECLARED VALUE EXCESS PROFITS  
TAX RETURN FOR 1943

SCHEDULE K—OTHER DEDUCTIONS

AUTOMOBILE CLUB OF MICHIGAN

Year ended December 31, 1943

Commissions	\$ 178,129.59
Printing, stationery, and office supplies	216,471.78
Telephone and telegraph	63,055.28
Directors' and department heads' meetings	1,368.85
Traveling	29,751.64
Automobile expense	7,185.98
Dues and memberships	558.75
Entertainment	1,415.82
Legal expense	1,823.50
Maps and guides	16,072.65
License expense	831.50
Ticket office expense	516.72
Emergency road service	548,364.58
Ponchos, hats, arm bands, etc.	11,272.08
Dinners, banquets, etc.	2,511.10
Postage and mailing	49,051.22
Cuts, mats, photos, etc.	8,182.36
Auditing	1,600.00
Insurance	7,335.09
Club emblems	1,069.12
AAA dues	52,969.25
Special representative	2,363.45
Safekeeping service	1,720.91
Signs	3,097.04
Employees' pension plan	37,702.17
Light, heat, and water	15,813.96
Advertising	9,933.54
Accident policy premiums	66,240.98
Radio broadcasts	28,089.82
Janitor supplies	5,270.97
Editorials	1,047.50
Agency discount	3,449.24
Miscellaneous	19,240.06
Amortization of improvements to leased property	8,226.62

\$1,401,733.12

Less portion charged to Detroit Automobile Inter-Insurance  
Exchange

159,919.27

TOTAL \$1,241,813.85



## [fols. 221-222] BEFORE THE TAX COURT OF THE UNITED STATES

## EXHIBIT 15

TAXPAYER'S INCOME AND DECLARED VALUE EXCESS PROFITS  
TAX RETURN FOR 1944

## SCHEDULE K—OTHER DEDUCTIONS

## AUTOMOBILE CLUB OF MICHIGAN

Year ended December 31, 1944

Commissions	\$ 135,775.77
Printing, stationery, and office supplies	225,998.25
Telephone and telegraph	70,354.18
Meetings of directors and department heads	1,348.38
Traveling	30,311.61
Automobile expense	9,536.57
Dues and memberships	295.00
Entertainment	2,074.71
Wartime personnel adjustment	3,000.00
Legal expense	409.45
Maps and guides	27,346.22
License expense	700.84
Ticket of expense	809.45
Emergency road service	592,912.60
Ponchos, hats, arm bands, etc.	13,458.99
Dinners, banquets, etc.	3,528.79
Postage and mailing	56,724.69
Cuts, maps, photos, etc.	7,193.46
Auditing	1,920.00
Insurance	8,089.42
Club emblems	1,244.38
AAA dues	55,776.00
Special representative	2,343.64
Safekeeping service	1,591.23
Signs	4,039.90
Employees' pension plan	38,663.15
Light, heat, and water	16,281.87
Advertising	10,244.27
Accident policy premiums	65,738.00
Radio broadcasts	31,994.83
Janitor supplies	5,048.28
Editorials	1,350.00
Agency discount	4,979.33
Miscellaneous	27,130.03
Amortization of leasehold improvements	8,226.62

\$1,466,439.91

Less portion charged to Detroit Automobile Inter-Insurance  
Exchange

171,999.74

TOTAL \$1,294,440.17

(Here follows 1 Photolithograph, side folio 223)

✓ EXHIBIT 17

TAXPAYER'S INCOME AND DECLARED VALUE EXCESS PROFITS  
TAX RETURN FOR 1945

1945

For the year beginning 1945 ending 1945

ANTONELLI CLUB OF MICHIGAN

139 Baylar Avenue

Detroit 26, Michigan

Kind of business: Automobile Club

Business group code number: 35

Number of places of business: 1

9201311

Michigan

GROSS INCOME			
1. Gross sales (where inventories are an income-determining factor)		Less: Returns and allowances	
2. Less: Cost of goods sold. (From Schedule A)			
3. Gross profit from sales			
4. Gross receipts (where inventories are not an income-determining factor)	2,353,345	16	
5. Less: Cost of operations. (From Schedule B)			2,353,345 16
6. Gross profit where inventories are not an income-determining factor			
7. Interest on loans, notes, mortgages, bonds, bank deposits, etc.			
8. Interest on corporation bonds, etc.	5,508.55	196.93	5,311 60
9. (a) Interest on United States savings bonds and Treasury bonds owned 12 months or longer (amount of 12 months prior to March 1, 1945. (From Schedule C))	7,331.11	886.54	6,444 57
(b) Interest on Treasury bonds owned on or after December 1, 1945, and allowances based on or after March 1, 1945, by the United States or any agency or instrumentality thereof. (From Schedule C)	33,309.87	13.92	33,295 95
10. Rents			39,956 48
11. Royalties			
12. (a) Excess of net short-term capital gain over net long-term capital loss. (From Schedule D)			
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)			1,195 00
13. Total income (From Schedule E)			

[fol. 224-225]

## EXHIBIT 17—SCHEDULE K

## SCHEDULE K—OTHER DEDUCTIONS

## AUTOMOBILE CLUB OF MICHIGAN

Year ended December 31, 1945

Commissions	160,697.12
Emergency road service	875,279.60
Printing, stationery, and office supplies	232,183.83
Telephone and telegraph	79,942.38
Meetings of directors and department heads	2,117.95
Traveling	33,136.91
Automobile expense	14,994.98
Dues and memberships	597.00
Entertainment	2,530.10
Legal expense	953.18
Maps and guides	25,551.14
License expense	952.09
Ticket office expense	861.57
Ponchos, hats, arm bands, etc.	9,432.05
Dinners, banquets, etc.	2,877.97
Postage and mailing	59,501.02
Cuts, mats, photos, etc.	8,161.15
Auditing	2,160.00
Insurance	14,251.58
Club emblems	3,923.60
AAA dues	60,660.50
Special representative	2,371.55
Safekeeping service	1,715.43
Signs	1,884.66
Expense of unused real estate	2,034.92
Light, heat, and water	17,187.93
Accident policy premiums	56,018.46
Radio broadcasting	29,125.31
Detroit-Chicago Expressway expense	4,829.68
Janitor supplies	5,379.94
Editorials	1,680.00
Agency discount	6,327.99
Amortization of improvements to leased property	8,226.62
Miscellaneous	30,438.57
	<hr/>
	\$1,757,986.78
Less portion charged to Detroit Automobile Inter-Insurance Exchange	189,753.91
	<hr/>
TOTAL	<u>\$1,568,232.87</u>



(Here follows 1 Photolithograph, side folio 226)

EXHIBIT 19

TAXPAYER'S INCOME TAX RETURN FOR 1946

Form 1120  
Treasury Department  
Internal Revenue Service

UNITED STATES  
CORPORATION INCOME TAX RETURN  
For Calendar Year 1946

Page 1  
1946

or fiscal year beginning ..... 1946, and ending ..... 1947

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

AUTOMOBILE CLUB OF MICHIGAN

(Name)

139 Bagley Avenue

(Street and number)

Detroit 26

(City or town, postal zone number)

Michigan

(State)

Kind of business: Automobile Club

Business group serial number  
(from instruction N)

Number of places  
of business 34

File Code 22  
Serial No. 9  
District Mich  
(Cashier's stamp)

Cash Check M. O.  
First Payment

NORMAL-TAX NET INCOME COMPUTATION

Item and  
Instruction No.

GROSS INCOME

1. Gross sales (where inventories are an income-determining factor)	\$	Less: Returns and allowances	\$	\$
2. Less: Cost of goods sold. (From Schedule A)				
3. Gross profit from sales				\$
4. Gross receipts (where inventories are not an income-determining factor)			2,598,978.63	
5. Less: Cost of operations. (From Schedule B)				
6. Gross profit where inventories are not an income-determining factor			2,598,978.63	✓
7. Interest on loans, notes, mortgages, bonds, bank deposits, etc.				
8. Interest on corporation bonds, etc.	\$3,400.00	Less: Amortizable Bond Premium 159.36	3,240.64	✓
9. (a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of \$5,000 issued prior to March 1, 1941. (From Schedule M, line 19 (a) (3) (iii))	2,919.59	322.20	2,597.39	✓
(b) Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 19 (a) (3) (ii))				
(c) Interest on Treasury bonds issued on or after December 1, 1941, and on obligations				

[fol. 227-228]

## EXHIBIT 19—SCHEDULE K

## SCHEDULE K—OTHER DEDUCTIONS

## AUTOMOBILE CLUB OF MICHIGAN

Year ended December 31, 1946

Commissions.....	\$ 201,959.87
Emergency road service.....	851,729.69
Printing, stationery, and office supplies.....	288,638.24
Telephone and telegraph.....	97,024.20
Meetings of directors and department heads.....	2,255.99
Traveling.....	52,835.11
Automobile expense.....	16,443.77
Dues and memberships.....	482.78
Entertainment.....	2,912.82
Legal expense.....	167.00
Maps and guides.....	135,979.09
License expense.....	1,405.71
Ticket office expense.....	2,416.48
Ponchos, hats, arm bands, etc.....	16,702.79
Dinners, banquets, etc.....	3,530.43
Postage and mailing.....	60,278.57
Cuts, mats, photos, etc.....	11,472.25
Auditing.....	3,497.39
Insurance.....	8,033.94
Club emblems.....	17,809.45
AAA dues.....	65,176.75
Special representative.....	2,585.11
Safekeeping service.....	1,581.49
Signs.....	2,815.34
Expense of real estate not used in operations.....	9,023.59
Light, heat, and water.....	15,809.14
Accident policy premiums.....	109,792.25
Radio broadcasting.....	25,613.75
Detroit-Chicago Expressway expense.....	6,478.47
Janitor supplies.....	6,431.94
Editorials.....	2,100.00
Agency discount.....	7,117.78
Amortization of improvements to leased property.....	8,226.62
Miscellaneous.....	30,526.09
	<hr/>
	\$2,068,763.89
Less portion charged to Detroit Automobile Inter-Insurance Exchange.....	221,375.72
	<hr/>
TOTAL.....	\$1,847,388.17

Note—Data required to be filed in connection with amounts contributed under a pension plan (Item 29b) was not completed when this return was filed, but will be presented upon completion.



# Before The Tax Court of the United States 188A

EXHIBIT 20

## TAXPAYER'S INCOME TAX RETURN FOR 1947

Form 1120  
Treasury Department  
Internal Revenue Service

### UNITED STATES CORPORATION INCOME TAX RETURN For Calendar Year 1947

Page 1  
1947

or fiscal year beginning \_\_\_\_\_, 1947, and ending \_\_\_\_\_, 1948

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

AUTOMOBILE CLUB OF MICHIGAN

(Name)

139 Bagley Avenue

(Street and number)

Detroit

26

Michigan

(City or town, postal zone number)

(State)

Kind of business: Automobile Club

Business group serial number  
(from Instruction IV)

Number of places  
of business

34

File  
Code

Serial  
No.

2021

District

(Clerk's stamp)

Cash Check M. O.

First Payment

### NORMAL-TAX NET INCOME COMPUTATION

Item and  
Instruction No.

#### GROSS INCOME

1. Gross sales (where inventories are an income-determining factor)	\$	Less: Returns and allowances	\$	
2. Less: Cost of goods sold. (From Schedule A)				
3. Gross profit from sales				
4. Gross receipts (where inventories are not an income-determining factor)	\$2,849,504	94		
5. Less: Cost of operations. (From Schedule B)				
6. Gross profit where inventories are not an income-determining factor			2,849,504	94
7. Interest on loans, notes, mortgages, bonds, bank deposits, etc.				
8. Interest on corporation bonds, etc.	\$2,740.55	\$141.25	2,599	30
9. (a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of \$5,000 issued prior to 1941 (From Schedule C)	454	72	20	55



[fol. 230-231]

## EXHIBIT 20—SCHEDULE K

## SCHEDULE K—OTHER DEDUCTIONS

## AUTOMOBILE CLUB OF MICHIGAN

Year ended December 31, 1947

Commissions.....	\$ 116,580.66
Emergency road service.....	885,960.07
Printing, stationery, and office supplies.....	335,250.55
Telephone and telegraph.....	101,316.24
Meetings of directors and department heads.....	2,787.76
Traveling.....	60,139.44
Automobile expense.....	19,769.00
Dues and memberships.....	575.50
Entertainment.....	2,503.12
Legal expense.....	884.73
Maps and guides.....	58,150.10
License expense.....	1,291.18
Ticket office expense.....	2,046.03
Ponchos, hats, arm bands, etc.....	21,046.14
Dinners, banquets, etc.....	8,819.55
Postage and mailing.....	55,885.68
Cuts, mats, photos, etc.....	14,999.80
Auditing.....	3,495.72
Insurance.....	9,197.46
Club emblems.....	24,160.68
AAA dues.....	61,001.50
Special representative.....	2,833.67
Safekeeping service.....	1,561.64
Signs.....	5,055.75
Expense of real estate not used in operations.....	6,334.80
Light, heat, and water.....	19,066.05
Accident policy premiums.....	232,653.75
Detroit-Chicago expressway expense.....	7,000.55
Janitor supplies.....	7,485.10
Editorials.....	1,848.00
Agency discount.....	8,133.97
Amortization of improvements to leased property.....	7,149.40
Miscellaneous.....	38,718.35
	<hr/>
	\$2,123,701.94
Less portion charged to Detroit Automobile Inter-Insurance Exchange.....	271,225.63
	<hr/>
TOTAL.....	\$1,852,476.31

11. Royalties			
12. (a) Excess of net short-term capital gain over net long-term capital loss. (From Schedule C)			
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)			
13. Dividends. (From Schedule E)		1.195	00
14. Other income. (State nature)	Schedule attached	74.319	18
15. Total income in items 3, and 6 to 14, inclusive			2,513.867 94
<b>DEDUCTIONS</b>			
16. Compensation of officers. (From Schedule F)		36.086	23
17. Salaries and wages (not deducted elsewhere)		678.667	51
18. Rent		83.881	61
19. Repairs		21.718	52
20. Bad debts. (From Schedule G)		210	84
21. Interest		906	23
22. Taxes. (From Schedule H) (Do not deduct sales taxes paid on or after 3-1-41)		24.978	15
23. Contributions or gifts paid. (From Schedule I)		1,879	97
24. Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)			
25. Depreciation. (From Schedule J)		14,971	26
26. Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)			
27. Net operating loss deduction. (Submit statement)			
28. Amortization of emergency facilities. (Submit schedule)			
29. (a) Advertising		8,734	81
(b) Amounts contributed under a pension, annuity, stock bonus, or profit-sharing plan, etc.		38,723	26
(c) Other deductions authorized by law. (From Schedule K)		1,568,232	87
30. Total deductions in items 16 to 29, inclusive			2,478,991 26
31. Net income for declared value excess-profits tax computation (Item 15 minus Item 30)			34,876 68
32. Add: Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (i) (ii))	8981.91		842 69
33. Excess of net long-term capital gain over net short-term capital loss. (From Schedule C)			
34. Total of lines 31, 32, and 33			35,719 37
35. Less: Declared value excess-profits tax			-0-
36. Net income			35,719 37
37. Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of lines 9 (a) and 32)			2,287 26
38. Adjusted net income			28,432 11
39. Less: Adjusted excess profits net income from Form 1121. (See instruction on page 8)			-0-
40. Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 38 minus item 39, above)		1.015	75
41. Normal-tax net income			27,416 36
<b>TOTAL INCOME AND DECLARED VALUE EXCESS-PROFITS TAXES</b>			
42. Total income tax (line 38 or 50, page 2, whichever is applicable)			
43. Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation			
44. Balance of income tax	Exemption claimed		
45. Total declared value excess-profits tax (line 8, page 2)	as set forth in		
46. Total income and declared value excess-profits taxes due	attached rider		NO TAX

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[fol. 232] ARGUMENT AND SUBMISSION—October 5, 1955  
(omitted in printing)

IN UNITED STATES COURT OF APPEALS

JUDGMENT—Filed February 17, 1956

On Petition to Review a decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the decision of the said Tax Court in this cause be and the same is hereby affirmed.

[fol. 233] (File Endorsement Omitted.)

[fol. 234] IN UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 12247

AUTOMOBILE CLUB OF MICHIGAN, Petitioner

VS.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the Tax Court of the United States

OPINION—Decided February 17, 1956

Before ALLEN, McALLISTER and STEWART, Circuit Judges.

ALLEN, Circuit Judge. This case arises on petition to review a decision of the Tax Court of the United States sustaining a determination of deficiencies for the calendar years 1943 to 1947, inclusive, in the aggregate amount of \$447,445.44, \$161,184.43 being income taxes and \$286,261.01 being excess profits taxes. Petitioner was organized as a nonprofit corporation without capital stock or shares and has never paid dividends. The facts are not in dispute and



the questions presented are questions of law. The purposes of petitioner stated in its Articles of Association are the following:

To promote and foster the healthy growth of the automobile industry; to secure the adoption and enforcement of reasonable and useful traffic ordinances and motor vehicle laws; to promote the establishment and construction of permanent highways for traffic; to interest automobile owners and drivers in the principles of "Safety First," as applied to automobile traffic; to promote touring and to obtain and furnish touring information and the necessary sign boarding of public highways; and to cooperate in any work or movement [fol. 235] which may tend to benefit the automobile driver, user, owner, or manufacturer, and the automobile industry in general.

As found by the Tax Court:

During 1943 through 1947 the petitioner devoted most of its resources and efforts to the bettering of conditions for motorists and the promotion of proper laws relating to the use of the motor car, the promotion of travel and the use of the automobile for other modes of transportation. It engaged in the promotion of safety, the solution of traffic problems and the promotion of the formation of school boy patrols. It organized the school boy patrols in Michigan. To teachers in the schools it furnished textbooks dealing with the conduct and operation of school boy patrols. As a reward it annually took some of the patrol boys to Washington, D. C. Annually it conducted seminars in the University of Michigan to promote the education of school teachers in the state in driver training courses. Petitioner's safety and traffic and engineer departments made surveys throughout the State of Michigan at the request of various cities and communities and many of its proposals as to safety measures were adopted. Petitioner supplied to its members in Michigan and those affiliated with the American Automobile Association emergency road service. The petitioner published and furnished to each of its active members a magazine containing



news about travel and news about laws as they pertain to the use of automobiles. Maps and other touring information with reference to road conditions were also provided, as was assistance to the American Automobile Association in its designation or appointment of proper places for tourists to be housed and fed. The petitioner secured reservations for its members when traveling abroad and arranged for the shipping of their cars abroad. Petitioner also promoted and furnished gratis to various communities proper directional and stop signs. In its services the petitioner attempted to do for the motorist in a collective way that which he was unable to do as an individual.

The petitioner does not engage in or conduct any social activities.

Petitioner during 1934 had supplied the Commissioner with detailed information concerning its operations, its financial assets and liabilities, and its receipts and dis- [fol. 236] bursements. On June 11, 1934, the Commissioner wrote petitioner that on the basis of evidence submitted petitioner was entitled to exemption under the provisions of Section 101 (9) of the Revenue Act of 1932 and the corresponding sections of prior revenue acts; that, therefore, it was not required to file returns for 1933 and prior years, and that under the provisions of Section 101 (9) of the Revenue Act of 1934 it would not be required to file returns so long as there was no change in its organization, its purposes or methods of doing business.

On July 5, 1938, after submission by petitioner of the information required concerning its claim for exemption under Section 101 (9) of the Revenue Act of 1936, the Commissioner wrote petitioner advising it that "since it appeared that there had been no change in its form of organization or activities which would affect its status, the previous ruling of the Bureau holding it to be exempt from filing returns of income was affirmed under the Revenue Act of 1936."

In May, 1945, the Commissioner wrote petitioner that the Bureau of Internal Revenue was reconsidering the question of the exemption of automobile associations from Federal

income taxation in light of the opinion of the Chief Counsel of the Bureau of Internal Revenue as set forth in G. C. M. 23688, C. B. 1943, 283. After petitioner had furnished certain further information, the Commissioner again wrote petitioner on July 16, 1945, calling attention to the fact that Section 101 (9) of the Internal Revenue Code provides for the exemption of

"Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder."

The Commissioner's communication continued as follows:

"This office holds that the term 'club' as used in the above section of law contemplates commingling of members, one with the other in fellowship. Thus, an organization should be so composed and its activities be such that fellowship among the members plays a material part in the life of the organization in order for it to come within the meaning of the term 'club.'"

"The evidence submitted shows that fellowship does not constitute a material part of the life of your organization and that your principal activity is the rendering [fol. 237] of commercial services to your members.

"It is, accordingly, held that you are not a club 'organized and operated exclusively for pleasure, recreation and other nonprofitable purposes,' within the meaning of section 101 (9) of the Internal Revenue Code or the corresponding sections of prior revenue acts, and, therefore, are not entitled to exemption under those sections. Furthermore, there is no other provision of law under which an organization of your character can be held to be exempt from Federal income tax.

"Bureau rulings of June 11, 1934 and July 5, 1938 are hereby revoked.

"In view of all the facts and circumstances in your case it is held, with the approval of the Secretary of the Treasury, that you will not be required to file income tax returns for years beginning prior to January 1,

		Less: Amortizable Bond Premium		
8.	Interest on corporation bonds, etc.	\$3,400.00	\$159.36	3,240.64 ✓
9.	(a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of \$5,000 issued prior to March 1, 1941. (From Schedule M, line 19 (a) (2) (iii))	2,919.59	322.20	2,597.39 ✓
	(b) Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 19 (a) (2) (ii))			
	(c) Interest on Treasury notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Schedule M)	34,610.67	13.92	34,596.75 ✓
10.	Rents			58,567.52
11.	Royalties			
12.	(a) Excess of net short-term capital gain over net long-term capital loss. (From Schedule C)			
	(b) Excess of net long-term capital gain over net short-term capital loss. (From Schedule C)			
	(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)			
13.	Dividends. (From Schedule E)			
14.	Other income. (State nature)			99,205.93
15.	Total income in items 8, and 6 to 14, inclusive			2,792,186.86
<b>DEDUCTIONS</b>				
16.	Compensation of officers. (From Schedule F)			37,855.70
17.	Salaries and wages (not deducted elsewhere)			802,744.15
18.	Rent			102,821.36
19.	Repairs			32,708.40
20.	Bad debts. (From Schedule G)			416.75
21.	Interest			
22.	Taxes. (From Schedule H)			28,581.84
23.	Contributions or gifts paid. (From Schedule I)			
24.	Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)			
25.	Depreciation. (From Schedule J)			15,920.16
26.	Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)			
27.	Net operating loss deduction. (Submit statement)			
28.	Amortization of emergency facilities. (Submit schedule)			
29.	(a) Advertising			9,871.06
	(b) Amounts contributed under a pension, annuity, stock bonus, or profit-sharing plan, etc.			48,020.08
	(c) Other deductions authorized by law. (From Schedule K)			1,847,388.17
30.	Total deductions in items 16 to 29, inclusive			2,927,580.41
31.	Net income (item 15 minus item 30)			\$130,393.55
32.	Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of items 9 (a) and (b))			2,751.55
33.	Adjusted net income			\$133,145.10
34.	Less: Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 33, above)			
35.	Normal-tax net income			\$133,145.10
<b>TOTAL INCOME TAX</b>				
36.	Total income tax (line 19, page 3)			
37.	Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation			
38.	Balance of income tax due	Exemption claimed as set forth in attached rider		No tax

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7. Interest on loans, notes, mortgages, bonds, bank deposits, etc.				
8. Interest on corporation bonds, etc.	\$2,740.55	\$141.25	2,599	30
9. (a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of \$5,000 issued prior to March 1, 1941. (From Schedule M, line 19 (a) (3) (iii))	1,454.13	80.55	1,373	58
(b) Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 19 (a) (3) (ii))				
(c) Interest on Treasury notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Submit schedule)	34,526.83	13.92	34,512	91
10. <i>Rents</i>			48,756	48
11. Royalties				
12. (a) Excess of net short-term capital gain over net long-term capital loss. (From Schedule C)				
(b) Excess of net long-term capital gain over net short-term capital loss. (From Schedule C)			13,952	42
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)				
13. Dividends. (From Schedule E)			103,166	72
14. Other income. (State nature)				
15. Total income in items 3, and 8 to 14, inclusive				8,053,866 35
<b>DEDUCTIONS</b>				
16. Compensation of officers. (From Schedule F)			37,915	00
17. Salaries and wages (not deducted elsewhere)			912,317	04
18. Rent			121,949	30
19. Repairs			60,162	98
20. Bad debts. (From Schedule G)				
21. Interest				
22. Taxes. (From Schedule H)			37,143	94
23. Contributions or gifts paid. (From Schedule I)				
24. Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)				
25. Depreciation. (From Schedule J)			41,553	84
26. Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)				
27. Net operating loss deduction. (Submit statement)				
28. Amortization of emergency facilities. (Submit schedule)				
29. (a) Advertising			14,282	28
(b) Amounts contributed under a pension, annuity, stock bonus, or profit-sharing plan, etc.			50,274	95
(c) Other deductions authorized by law. (From Schedule K)			1,852,476	31
30. Total deductions in items 16 to 29, inclusive				3,128,075 73
31. Net income (item 15 minus item 30)				74,209 38
32. Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of items 9 (a) and (b))			1,373	58
33. Adjusted net income				75,582 5
34. Less: Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 33, above)				
35. Normal-tax net income				75,582 56
<b>TOTAL INCOME TAX</b>				
36. Total income tax (line 19, page 3)				
37. Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation				
38. Balance of income tax due				

[229]

[76]



1943. You are, however, required to file returns for the year 1943 and subsequent years."

In compliance with this communication petitioner filed income and excess profits tax returns for the calendar years 1943 and 1944 under protest, on the ground that it was exempt from taxes, and filed a petition to review the determination of the Commissioner. During the trial before the Tax Court petitioner admitted that it was taxable "for the period subsequent to July 16, 1945," but contended that the Commissioner acted arbitrarily and without authority in revoking previous rulings as to exemption, and in determining a deficiency in taxes for any period prior to July 16, 1945. In this court petitioner contends that the Commissioner in 1945 was estopped from retroactively revoking the prior determinations, made by a predecessor Commissioner, upon the ground that there had been no change in the law or in the character and operation of petitioner as a club.

The Commissioner ruled correctly in his determination of July 16, 1945, that petitioner was not exempt from tax under Section 101 (9), Internal Revenue Code. The statute plainly applies, as decided in G. M. C. 23688, not to any and all organizations in which no dividends are declared, but to "clubs," namely, to organizations in which members commingle in fellowship. Also this section of the statute applies, not to every kind of club, but to clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes. Since petitioner performs commercial services for its members it is not the kind of organization defined in [fol. 238] the statute. The right to exemption which arises under Section 101 (9), as it is created by statute, cannot be modified by the regulations. Since petitioner did not fall within the exemption provision it was at no time exempt from taxation, but was excused from taxation by a legal error of the Commissioner. The requirement that petitioner file returns for the years 1943 and 1944 was therefore valid and proper and, since petitioner was not required to file returns for a number of preceding years, it cannot be claimed that the ruling was arbitrary and oppressive.

As to the question of estoppel, petitioner does not assert that it has altered its position to its detriment in reliance on

the former rulings of the Commissioner. In default of proof to that effect estoppel does not enter into the case.

Petitioner urges that *H. S. D. Company v. Kavanagh*, 191 Fed. (2d) 831 (C. A. 6), and *Woodworth v. Kales*, 26 Fed. (2d) 178 (C. A. 6), require reversal of the Tax Court's decision. In the *H. S. D. Company* case the District Court, which had upheld the Commissioner in changing a ruling as to the exemption from taxation of contributions to two employees' trusts, was reversed by this court. We held that the Commissioner under the facts of that case was bound by the previous rulings of his predecessor determining that contributions to the employees' trusts were exempt from taxation. The court pointed out that the reasons for the successor Commissioner's action involved no new facts and no mistake of law, but only different inferences from the same facts. We there cited with approval an opinion by Judge Raymond, *Boyne City Lumber Company v. Doyle*, D. C. Mich., 47 Fed. (2d) 772, which declared that it is "an insupportable principle to say that such a determination of value may be reopened by each succeeding Commissioner, or by the same Commissioner, because a review of the same facts results in a difference or change of opinion." In *Woodworth v. Kales*, *supra*, this court held that, where income tax was assessed under a ruling approved by the then Commissioner of Internal Revenue, a succeeding Commissioner was without authority, upon re-examination of the same evidence to revoke such assessment and reassess an additional tax. The court concluded that there was no statutory authority for the right to reopen and re-examine the question of the 1913 fair value of the stock involved and "then, upon a re-examination of the same evidence, to reach a different result, flowing not from the discovery of any fraud or mistake, clerical or otherwise; in any fundamental fact [fol. 239] or matter of law, but resulting only from a 'more matured judgment.' " These cases do not, however, support petitioner's contention. In the *Kales* case the court declared that the Commissioner's "mistake of law will often, or usually, justify a revision of his conclusion." In the *H. S. D. Company* case we pointed out that the facts involved "no mistake of law, but only different inferences from the same facts." The Commissioner is not bound by his own or his

predecessor's prior mistakes of law. *Chattanooga Automobile Club v. Commissioner of Internal Revenue*, 182 Fed. (2) 551 (C. A. 6); *Austin Company v. Commissioner of Internal Revenue*, 35 Fed. (2d) 910 (C. A. 6); *Keystone Automobile Club v. Commissioner of Internal Revenue*, 181 Fed. (2d) 402 (C. A. 3); *Smyth v. California State Automobile Association*, 175 Fed. (2d) 752 (C. A. 9), certiorari denied 338 U. S. 905. Cf. *Langstaff v. Lucas*, 9 Fed. (2d) 691, affirmed per curiam 13 Fed. (2d) 1022 (C. A. 6), certiorari denied 273 U. S. 721.

That the ruling of July 16, 1945, corrected a mistake of law cannot be disputed. The principal question was the legal significance of the word "club" in Section 101 (9) of the Internal Revenue Code. Another legal question was, if petitioner was a club in which its members commingled in fellowship, whether the organization and operation were exclusively for pleasure, recreation, and other nonprofitable purposes. The earlier Commissioners by their erroneous construction of the statute had made mistakes of law which were subject to correction by the later Commissioner.

Petitioner also claims that, irrespective of the decisions in the *H. S. D. Company* and the *Kales* cases, *supra*, it is entitled to exempt status under the doctrine of *Helvering v. R. J. Reynolds Tobacco Company*, 306 U. S. 110. This is on the theory that the Treasury Regulations 111, Section 29.101-1, and previous corresponding Regulations provided in substance that when an organization has established its right to exemption it need not thereafter make a return of income or any further showing with respect to its status unless it changes the character of its operations or the purpose for which it was originally created. An amendment made to the Regulations later in 1944 contained substantially the same provision. Congress enacted a number of Internal Revenue statutes during this period to which the Treasury Regulations cited apply, but Congress did not alter or change the law so as to affect these Regulations. Petitioner therefore claims that the Regulations cited, under the authority of the *Reynolds* case, *supra*, constituted [fol. 240] a rule of law which cannot be changed by a subsequent determination of the Commissioner.

In the *Reynolds* case the Supreme Court ruled that the

gain secured by a corporation in the sale of its own stock in 1929 should be governed by the regulation in force in 1929, rather than by an amendment adopted by the Treasury in 1934, which made sales by a corporation of shares of its own capital stock subject to tax under certain circumstances. The Supreme Court refused to permit retroactive application of the Treasury amendments of 1934.

The Tax Court differentiated the *Reynolds* case from the instant one upon the ground that the Regulations there involved provided that a corporation realizes no gain or loss from the sale of its own stock and hence were legislative in character, while the Regulations here involved, Section 29.101-1 of Regulation 111, were administrative only.

In addition to this valid distinction between the *Reynolds* case and that presented herein we think a cogent answer to petitioner's contention is that upon this branch of the case it proceeds from its false premise that it established the right to exemption in 1934-1936, long before July 16, 1945, when the Commissioner revoked his previous ruling. Petitioner never had that right. If it had actually established such a right, the Commissioner could not rightfully revoke it, yet petitioner does not contest the Commissioner's right of revocation. The fact that the Commissioner in his earlier rulings misinterpreted the statutory meaning of the term "club" and ignored the circumstance that the service rendered petitioner's members were purely commercial, does not demonstrate that petitioner established a right to exemption. It demonstrates that the Commissioner made a mistake of law which under the weight of authority he was entitled to correct. *Chattanooga Automobile Club v. Commissioner of Internal Revenue, supra*; *Keystone Automobile Club v. Commissioner of Internal Revenue, supra*; *Smyth v. California State Automobile Association, supra*.

The retroactive ruling of the Commissioner ordering that tax returns be filed for 1943 and 1944 was authorized under Section 3791(b) of the 1939 Code. This section reads as follows:

Retroactivity of regulations or rulings.—The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to



[fol. 241] the internal revenue laws, shall be applied without retroactive effect.

This provision clearly vests the Secretary or the Commissioner acting with approval of the Secretary; with the discretionary power to prescribe the extent, "if any," to which the ruling of the Commissioner shall or shall not be retroactive. The phrase "if any," authorizes the Secretary or the Commissioner acting with the approval of the Secretary to withhold retroactivity for the entire period involved or for any part thereof. In the instant case, if the Commissioner's ruling of July 16, 1945, were given full retroactive effect, it would require return of income taxes between the years 1934 and 1945. The Committee Reports of the House of Representatives, in recommending enactment of the predecessor section of the 1934 Act, pointed out that "Regulations, Treasury Decisions, and rulings which are merely interpretive of the statute, will normally have a universal application. . . ." (House Report No. 704, 73rd Congress, 2d Section, page 38). The report then goes on to state that the cases involving rulings with reference to past transactions which have been closed by taxpayers in reliance upon existing practice, in some cases will work such inequitable results that it is believed desirable to lodge in the Treasury Department the power to avoid these results, by applying certain regulations, Treasury Decisions, and rulings with prospective effect only. This legislative history supports the above construction of Section 3791 (b).

Under the established principle that the greater power includes the less, this statute conferred authority upon the Treasury officials named to make the ruling of July 16, 1945, retroactive for only part of the period involved and for only two of the thirteen years. We conclude that this action was in no way arbitrary. The taxpayer was not misled nor has it shown that any unusual hardship resulted from the Commissioner's action.

Petitioner next urges that the statute of limitations bars assessment of the deficiencies asserted, contending that the period of limitations commenced to run from March 15, 1944, and March 15, 1945, when the 1943 and 1944 returns were due. If this is true, the assessment is barred. Ordi-

narily the three-year statute of limitations begins to run from the date that the return is filed, which date was October 22, 1945. If this date controls, the assessment is not barred. Section 275 (a) I. R. C. Petitioner claims that it was under no duty to file a return and that in such case the three-year [fol. 242] statute of limitations starts running from the date the return should have been filed if there had been a duty to file it. *Balkan National Insurance Company v. Commissioner of Internal Revenue*, 101 Fed. (2d) 75 (C. A. 2).

In this connection the chronology of the proceedings is important. The rulings of exemption were revoked on July 16, 1945. Petitioner was ordered to file 1943 and 1944 returns and these returns were filed October 22, 1945. The parties on August 25, 1948, executed consents that the income and excess profits taxes could be assessed on or before June 30, 1949, and on May 23, 1949, executed similar consents that the income and excess profits taxes could be assessed on or before June 30, 1950. The notice of deficiency was mailed to petitioner February 20, 1950.

Petitioner's assertion that his returns were due in March, 1944, and March, 1945, ignores the fact that Section 276 (a) provides that in the case "of a failure to file a return the tax may be assessed . . . at any time."

The Commissioner relies upon this statute and points out that petitioner failed to file the returns for 1943 and 1944 until three months after July 16, 1945. Petitioner answers that it was entirely blameless in its failure to file upon the due dates because its inaction was caused by the Commissioner. But when on July 16, 1945, the Commissioner expressly required petitioner to file returns, petitioner was under an obligation to file them as ordered. The delay in filing for more than three months was not induced by the Commissioner. Moreover, petitioner voluntarily agreed twice to extension of time for the assessment of the tax. This was not induced by the Commissioner.

The returns made upon Form 990 did not constitute the returns contemplated by Section 275 (a), namely, return of income taxes. They were not appropriate for the computation or assessment of income or excess profits taxes. As held by the Tax Court, they did not contain the data necessary to enable the Commissioner to compute petitioner's liability.

Two taxes were involved here, income and excess profits taxes for 1943 and 1944. The returns on Form 990 for each year were not the returns required of corporations under Section 52 (a) of the Internal Revenue Code. The contention that where two returns are required one return answers the purpose was dismissed by the Supreme Court of the United States as having no merit in *Commissioner of Internal Revenue v. Lane-Wells Co.*, 321 U. S. 219. We conclude that under this record the assessment was not barred by Section 275 (a).

[fol.243] The determination that membership dues received by petitioner should be included in the return of income for the year in which they were received was clearly correct. *E. H. Sheldon & Company v. Commissioner of Internal Revenue*, 214 Fed. (2d) 655, 656 (C. A. 6); *S. Loewenstein & Son v. Commissioner of Internal Revenue*, 222 Fed. (2d) 919 (C. A. 6); *Spencer White & Prentiss, Inc., v. Commissioner of Internal Revenue*, 144 Fed. (2d) 45 (C. A. 2), certiorari denied 323 U. S. 780; *North American Oil Consolidated v. Burnet*, 286 U. S. 417, 424; *Security Flour Mills Company v. Commissioner of Internal Revenue*, 321 U. S. 281; *United States v. Lewis*, 340 U. S. 590. In this case the Supreme Court stated "The 'claim of right' interpretation of the tax laws has long been used to give finality to that [the accounting] period, and is now deeply rooted in the federal tax system. . . . We see no reason why the Court should depart from this well-settled interpretation merely because it results in an advantage or disadvantage to a taxpayer."

In conclusion the Tax Court correctly decided the issue as to depreciation deductions. Petitioner relies upon two General Counsel Memoranda, Nos. 10857 and 27491, as requiring that a different formula for depreciation deduction be applied from that used by the Commissioner. These memoranda have no bearing here. They come into force only where a petitioner is shown at some time during its existence to have been an organization exempt from taxation. As previously shown, petitioner was at no time exempt.

The decision of the Tax Court is affirmed.

McALLISTER, Circuit Judge, dissenting. While cheerfully acknowledging the persuasiveness of the excellent opinion

of Judge Allen, it appears to me that the decision of the Tax Court should be reversed for the reason that I consider the Commissioner's revocation of petitioner's tax-exempt status, with retroactive effect, to be inequitable. A summary of the facts may clarify the conclusion that I think should follow.

The record discloses that in May, 1934, the Commissioner of Internal Revenue, in reply to petitioner's written claim to exemption from federal income tax, requested evidence in support of its claim. This evidence was submitted in writing by petitioner and consisted of a detailed explanation of its activities, the sources from which its income was derived, the disposition it made of its income, and facts with respect to its capital stock, dividends, and all other relevant [fol. 244] facts relating to its activities. It disclosed that its income came from dues paid by the members of the club and the sale of advertising in a monthly magazine published by it; that no dividends or interest were paid on capital stock, and that, in fact, the club had no capital stock. The evidence submitted to the Commissioner further disclosed that the club charged no entrance or initiation fees and that its activities were composed of touring service, including logs, road maps, general touring information to members, and emergency road service, such as starting of members' disabled cars on the road, towing them to official club garages, changing tires, and such similar services. Moreover, the club disclosed that it was interested in safety activities and that several men were employed by the club for work in the public schools as well as work in cooperation with the various cities of the State of Michigan to promote safety and improve traffic conditions. In addition, the club cooperated in all work or improvement which might tend to benefit the automobile driver, user, owner, or manufacturer, and the automobile industry in general.

After considering this evidence, the Commissioner wrote the club on June 11, 1934, stating:

"Reference is made to the evidence submitted by you in support of your claim to exemption from Federal income taxation. . . . it is held that you are entitled to exemption under the provisions of section 103(9) of the Revenue Act of 1932 and the corresponding sections



of prior revenue acts. You are not, therefore, required to file returns for 1933 and prior years and it follows that future returns, under the provisions of section 101(9) of the Revenue Act of 1934, will not be required so long as there is no change in your organization, your purposes or methods of doing business."

More than three years later, on September 29, 1937, the Commissioner sent the club a questionnaire and requested it to supply certain information concerning its claim for exemption under Section 101(9) of the Revenue Act of 1936. The club filled in the questionnaire, signed it, and returned it to the Commissioner, with a letter dated October 27, 1937, together with a copy of its financial statement as of December 31, 1936. Thereafter, the Commissioner again determined that the club was tax-exempt under the Revenue Act of 1936, as it had been under the Revenue Act of 1932 and all prior revenue acts, and so notified the club by a letter dated July 5, 1938, in which the Commissioner stated:

[fol. 245] "Reference is made to the questionnaire and supporting data submitted in response to the request of the Bureau for the purpose of determining whether the exemption from income taxation under the provisions which now appear in Section 101 of the income tax law, to which you have heretofore been held to be entitled, is equally applicable under the Revenue Act of 1936.

"Careful consideration has been given to the evidence submitted and as it appears that there has been no change in your form of organization or activities which would affect your status the previous ruling of the Bureau holding you to be exempt from filing returns of income is affirmed under the Revenue Act of 1936."

Seven years later, on May 12, 1945, a new Commissioner wrote the club, stating:

"Reference is made to Bureau ruling of June 11, 1934, holding you entitled to exemption from Federal income tax under the provisions of section 103 (9) of the Revenue Act of 1932 and the corresponding provisions of prior revenue acts, which ruling was affirmed

July 5, 1938, under the provisions of the Revenue Act of 1936.

"The Bureau is now reconsidering the question of the exemption of automobile associations from Federal income tax in the light of the opinion of the Chief Counsel of the Bureau of Internal Revenue in regard thereto ...."

The Commissioner's letter further requested the club to submit evidence similar to that which it had already submitted on several occasions.

The club, in reply to the request of the Commissioner, thereafter submitted the information requested, which was, in all important particulars, the same as that which it had repeatedly furnished during the prior eleven years.

Upon receipt of this information, the new Commissioner made a determination based upon the same facts, law, and regulations as were in effect during the prior determinations, to the effect that the tax-exempt determinations of the prior Commissioner were erroneous and, accordingly, retroactively revoked the club's tax-exempt status by letter of July 16, 1945, which stated:

[fol. 246] "Reference is made to the information submitted by you for use in determining your status for Federal income tax purposes in view of the opinion expressed [by the Chief Counsel of the Bureau of Internal Revenue].

"Under date of June 11, 1934 you were held entitled to exemption from Federal income tax under the provisions of section 103(9) of the Revenue Act of 1932 and the corresponding provisions of prior revenue acts, which ruling was affirmed July 5, 1938, under the provisions of the Revenue Act of 1936.

"The information recently submitted by you shows that your activities consist of providing travel information and service, rendering emergency road service, publishing the Motor News, locating automobile parts for members' cars to keep them in service, providing safety education in public and parochial schools, organizing and equipping school patrols and providing traffic surveys for Michigan cities in the interest of

safety. Your income is derived from membership dues, interest on investments, and advertising in the Motor News. It is expended for rendering services to your members."

The above evidence which the Commissioner referred to as "the information recently submitted by you" was exactly the same evidence that had been submitted by the club eleven years before.

The above letter from the Commissioner continued:

"Section 101(9) of the Internal Revenue Code provides for the exemption of:

'Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.'

"Prior revenue acts carry similar provisions.

"This office holds that the term 'club' as used in the above section of the law contemplates commingling of members, one with the other in fellowship. Thus, an organization should be so composed and its activities be such that fellowship among the members plays a material part in the life of the organization in order for it to come within the meaning of the term 'club'.

"The evidence submitted shows that fellowship does not constitute a material part of the life of your [fol. 247] organization and that your principal activity is the rendering of commercial services to your members.

"It is, accordingly, held that you are not a club 'organized and operated exclusively for pleasure, recreation and other nonprofitable purposes', within the meaning of section 101(9) of the Internal Revenue Code or the corresponding sections of prior revenue acts, and, therefore, are not entitled to exemption under those sections. Furthermore, there is no other provision of law under which an organization of your character can be held to be exempt from Federal income tax.

"Bureau rulings of June 11, 1934 and July 5, 1938 are hereby revoked.

"In view of all the facts and circumstances in your case it is held, with the approval of the Secretary of the Treasury, that you will not be required to file income tax returns for years beginning prior to January 1, 1943. You are, however, required to file returns for the year 1943 and subsequent years."

This ruling dated July 16, 1945, therefore, retroactively revoked the Club's tax-exempt status for the two prior years of 1943 and 1944.

The Commissioner's retroactive revocation of petitioner's tax-exempt status is, in my opinion, invalid.

In *Rock Island, A. & L. Railroad Co. v. United States*, 254 U. S. 141, 143, Mr. Justice Holmes made the often quoted statement that "Men must turn square corners when they deal with the Government"; but, subsequently, referring to this observation, Judge McDermott, of the Tenth Circuit, in *Howbert v. Penrose*, 38 F. 2d 577, 581, added that "the government ought to turn square corners when dealing with its citizens." That policy has, apparently, heretofore been followed by the Commissioner of Internal Revenue. Thus, in an article, "Taxpayer's Rulings," in 5 *Tax Law Review*, page 115 (1950), Mr. J. P. Wenchel, formerly Chief Counsel of the Bureau of Internal Revenue, stated that, with exceptions not here relevant, "the policy of not disturbing a ruling once it has been issued, is now strongly ingrained in the administrative practice of the Bureau. Rulings are not issued indiscriminately, hypothetically, or for a useless purpose, and once issued they can be acted upon with reliance. This policy of fair play, which has been the unvarying policy of the Bureau for a decade and more, is so strong that even where a Supreme Court decision changes the Bureau's previous interpretation of the law, and such change operates to the benefit of the [fol. 248] Government, the Bureau at times has not applied such changes retroactively to the detriment of taxpayers, including those who did not ask for a ruling. Much water has gone over the dam since the Couzens case [James Couzens, 11 B. T. A. 1040 (1928)]. Taxpayers may find it more difficult to procure Bureau rulings than in those days, but once obtained, they can rely upon the Bureau's sense



of fairness, and proceed to carry out their transactions knowing that they will not be faced with a later assessment contrary to what had been expected."<sup>1</sup>

The foregoing policy would seem to have been confirmed by a Revenue Ruling,<sup>2</sup> issued by the Commissioner, strangely enough, after his revocation of petitioner's tax-exempt status, and after the decision of the Tax Court in this case, in the following language: "It is the general policy of the Internal Revenue Service to limit the revocation of a ruling with respect to an organization previously held to qualify under section 101 to a prospective application only, if the organization has acted in good faith in reliance upon the ruling issued to it and a retroactive revocation of such ruling would be to its detriment." This professed policy of the Commissioner of Internal Revenue of not revoking his ruling once it had been acted upon, is consonant with the view of this court, not merely as to proper policy to be pursued, but as to the governing law, which has, for many years, been repeatedly and consistently followed in the decision of cases coming before it.

In *Woodworth v. Kales*, 26 F. 2d 178 (C. C. A. 6), in an opinion written for the court by Judge Denison, it was held that a new Commissioner is without authority to revoke the determination of a former Commissioner and reassess an additional tax based upon what appears to him to be a better judgment of the matter, if there are no newly discovered facts, no fraud or mistake, clerical or otherwise,

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<sup>1</sup> In the above article, the author defined the term, "taxpayer's ruling," as used therein, "to denote a statement in writing, normally in letter form, by the Commissioner of Internal Revenue or a Deputy Commissioner, setting forth the position of the Bureau with respect to a specific tax problem or problems of a specific taxpayer or taxpayers. Revenue agents and other representatives of the Bureau often give oral advice to taxpayers, but taxpayers cannot rely with impunity upon such representations or statements."

<sup>2</sup> Revenue Ruling 54-164, 1954-1 C. B. 88, 91 (originally issued as I. R. Mimeograph No. 54-73, dated April 28, 1954).

in any fundamental fact or matter of law. See also *Routzahn v. Brown*, 95 F. 2d 766, 771 (C. C. A. 6), and *H. S. D. Co. v. Kavanagh*, 191 F. 2d 831 (C.A. 6).

[fol. 249] In *Boyer City Lumber Co. v. Doyle*, 47 F. 2d 772 (D. C. Mich.), Judge Raymond stated that it was "unsupportable" to say that a determination of the value of the taxpayer's property could be reopened by each succeeding Commissioner because a view of the same facts resulted in a change of opinion, and it was held that the right to reopen such a determination depended upon the presence of a fraud, misrepresentation, or gross error. Further, in *Penrose v. Skinner*, 298 F. 335 (D. C. Col.) the court assumed that no one could contend that a succeeding Commissioner could overrule or ignore the decisions of his predecessor unless the decisions were erroneous in law or were tainted with fraud. The reasons for these views have been variously stated in different adjudications.

Courts have uniformly held that when the executive department of the government is charged with the execution of a statute, places a reasonable construction upon it, and acts upon that construction for a number of years, changes in the construction of the statute are looked upon with disfavor, when parties who have contracted with the government on the faith of the old construction may be injured thereby. *United States v. Alabama Great Southern Railroad Co.*, 142 U. S. 615; *Jacobs v. Pritchard*, 223 U. S. 200; *Whitebird v. Eagle-Picher Lead Co.*, 28 F. 2d 200 (D. C. Okla.), affirmed 40 F. 2d 479 (C. C. A. 10).

"If the language [of the statute] seemed to us doubtful (as it does not), the practically contemporaneous construction by the Treasury Department in its regulations would require us to exclude expenses incident to the organization of a corporation and the sale of its capital stock as being within the fair meaning of 'ordinary and necessary expenses incurred in carrying on the business' of such corporation." *Simmons Co. v. Commissioner of Internal Revenue*, 33 F. 2d 75, 76 (C. C. A. 1).

"Agencies do not enjoy a ruthless discretion to ignore their pasts. Like legislatures they must guard against illegal retroactivity. Like judges they are limited by res

judicata and influenced by stare decisis.”<sup>3</sup> See *National Labor Relations Board v. Guy F. Atkinson Co.*, 195 F. 2d 141, 150 (C. A. 9).

In this case, it is not claimed that the retroactive revocation was based upon any newly discovered facts, fraud, [fol. 250] or mistake, clerical or otherwise, in any fundamental fact. The one ground upon which the Commissioner contends that the retroactive ruling was proper and valid is that the former determination of the prior Commissioner was based upon a mistake of law, and that the succeeding Commissioner merely corrected this mistake.

That the prior rulings of the other Commissioners were based on a mistake of law, and, consequently, that the rulings can be revoked with retroactive effect, is the keystone of the Commissioner's argument in this case.

While the foregoing may be said to constitute the general rule, it is not every ruling based upon a mistake of law that may be afterward subject to so-called correction by the Commissioner, with retroactive effect. Where the construction of a statute by a former Commissioner has not been plainly erroneous, or in conflict with express statutory provisions, a succeeding Commissioner may not revoke the former ruling with retroactive effect.

“It is settled by many recent decisions of this court that a regulation by a department of government, addressed to and reasonably adapted to the enforcement of an act of Congress, the administration of which is confided to such department, has the force and effect of law if it be not in conflict with *express* statutory provision.” (Emphasis supplied.) *Maryland Casualty Co. v. United States*, 251 U. S. 342, 349.

A construction of a statute made by the body charged with its enforcement, which has long been followed in practical execution, and has been impliedly sanctioned by the re-enactment of the statute without alteration in the particulars construed, must, *when not plainly erroneous*, be treated as read into the statute. *New York, N. H. and H. R. Co. v. Interstate Commerce Commission*, 200 U. S. 361, 401.

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<sup>3</sup> See article by Frank C. Newman, “Should Official Advice Be Reliable?” 53 *Columbia Law Review*, pages 374, 376.

"This presumption that the department charged with the execution of the law has properly interpreted it is strengthened in proportion to the length of time such construction has obtained without challenge by the law-making power, so that, where such executive construction has been long continued, a court has a right to presume that Congress is content therewith. This exhausts the full force and effect of such construction, and, while not binding upon a court, nevertheless a court will be slow to depart therefrom, unless the language of the statute itself absolutely requires it to do so." *Mayes v. Paul Jones & Co.*, 270 F. 121, 130 (C. C. A. 6).

[fol. 251] Where a statutory provision is ambiguous, and the executive department which must apply and enforce it declares a construction (not in itself ambiguous) for administrative purposes, and thereafter Congress re-enacts the provision without substantial change, the courts will accept that construction unless it be plainly erroneous. *Walker v. United States*, 83 F. 2d 103, 107 (C. C. A. 8).

Regulations promulgated by the Treasury Department relative to income taxes have the force and effect of law, when not in conflict with *express* statutory provisions. *Crocker v. Lucas*, 37 F. 2d 275 (C. C. A. 9).

The construction given to the statute in this case by the former Commissioners cannot be said to be plainly erroneous and in conflict with the express provisions of the statute. That construction had been followed for twenty-three years by the Treasury Department.<sup>4</sup> The prior Commissioners had repeatedly asked for and received information from the taxpayer club and other automobile clubs with respect to every detail of their organization, activity, and characteristics; and had repeatedly held them to be tax-exempt under the provisions of the statute in question. When, finally, the last Commissioner "reconsidered," as he said, the status of automobile clubs and assessed taxes on

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<sup>4</sup> Automobile clubs were granted tax immunity by O. D. 643, 3 Cum. Bull. 241 (1920). That ruling was followed by G. C. M. 2867, VII-1 Cum. Bull. 115 (1928); G. C. M. 3555, VII-1 Cum. Bull. 117 (1928).



the ground that they were not within the statutory exemption because they were not a "social club" and that they were not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, the California State Automobile Association brought an action in the district court to recover overpayments of tax, and Judge Lemmon, now a member of the Court of Appeals of the Ninth Circuit, in a persuasive and comprehensive opinion in *California State Automobile Association v. Smyth*, 77 F. Supp. 131 (1948), held that the association was a club within the meaning of the statute, and that it was organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes; thus sustaining the rulings of the prior Commissioners of Internal Revenue.

When the same question came before the Tax Court in *Chattanooga Automobile Club v. Commissioner*, 12 T. C. 967 (1949), although the majority of the court held that the club was not exempt from taxation, four of the judges, in two separate opinions, dissented on the ground that the [fol. 252] organization was a club within the meaning of the statute, and that it was organized and operated for a nonprofitable purpose.

It is true that the judgment of the district court in the Smyth case, *supra*, was reversed in *Smyth v. California State Automobile Association*, 175 F. 2d 752 (C. A. 9), in an able opinion written for the court by Chief Judge Denman, in which the statute was construed in the light of the doctrine of ejusdem generis, pursuant to which it was held that clubs "organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes," in the language of the statute, meant that the "other nonprofitable purposes" must be concerned with pleasure and recreation. However, in a similar case, *Keystone Automobile Club v. Commissioner of Internal Revenue*, 181 F. 2d 402 (C. A. 3), Judge Goodrich, speaking for the court, in arriving at the same conclusion as the Court of Appeals of the Ninth Circuit to the effect that the club was not exempt from tax, rested his view on different grounds and expressly declined to construe the statute according to the doctrine of ejusdem generis, saying: "We have been treated to a good sized dose of so-called canons of construction known as noscitur

a sociis and ejusdem generis in connection with the argument. We find them just about as helpful in settling a specific case as those vials of distilled wisdom of the ages containing the phrases 'birds of a feather flock together' and 'a man is known by the company he keeps.' Throwing a vague phrase into law Latin does not make it any more useful in construing a statute." It may be noted that the opinion of the General Counsel of the Bureau of Internal Revenue, upon which the Commissioner revoked petitioner's tax-exempt status, was posited upon a construction of the statute according to the doctrine of *noscitur a sociis*.

The construction of the Act, in the opinion of Judge Goodrich, was based upon the fact that the statute set forth numerous types of organizations which were specifically exempted from taxation; and that the type represented by an automobile club was entirely different from those spoken of in the other paragraphs; that if the taxpayer automobile club's contention was right, Congress had thrown in a lot of unnecessary and confusing classifications in the other paragraphs of the section; and that it, therefore, appeared that Congress, in speaking of "clubs organized and operated exclusively for pleasure, recreation and other non-profitable purposes," was talking "about one type of organization among individuals which was, on the whole, different from the types talked about in the other paragraphs of this section." Judge Goodrich, however, pointed out that no attempt had been made to give retroactive effect to the ruling of the new Commissioner's revocation of the tax-exempt status of automobile clubs.

Both Judge Denman and Judge Goodrich, in the above cases, took notice of the place occupied by the automobile in the life of the country forty years ago and the evolution that had occurred since that time, with the suggestion that passenger cars in the early years were not used for commercial purposes, and that it may well have been that car owners in those days did club together for their common interests. At some time, this changed, and, as Judge Goodrich said, the Commissioner had the right to change his mind about the relative place of automobile owners in the scheme of things. It, therefore, may well have been the case that auto-

mobile clubs at one time were, without question, exempt from tax, and properly held so by the Commissioner. If so, it would seem inequitable that when a succeeding Commissioner arrived at the conclusion that the situation had changed, he could revoke the tax-exempt status he had determined upon for such clubs, with retroactive effect:

In *Chattanooga Automobile Club v. Commissioner of Internal Revenue*, 182 F. 2d 551, 554 (C. A. 6), Judge Martin, speaking for the court in affirming the action of the Tax Court in the Chattanooga case, *supra*, set forth the grounds for holding an automobile club not exempt from taxation in the following language:

"The petitioners contend that the words 'other non-profitable purposes' should not be construed as the Commissioner of Internal Revenue construed them to mean non-profitable purposes *similar* to purposes of pleasure and recreation. This argument overlooks the fact that preceding subsections of section 101 of the Internal Revenue Code specifically exempt nonprofit organizations operated for literary, educational, scientific, charitable, or religious purposes, chambers of commerce, business and civic leagues, and other specified eleemosynary institutions. Were the insistence of the petitioners accepted, many of these specific exemptions would be mere surplusage, inasmuch as they would fall within the sweep of the expression 'other non-profitable purposes' contained in subsection 9. We think the words 'other non-profitable purposes' carry [fol. 254] in the context a plain connotation that the purposes must be construed as coming within the same classification as pleasure and recreation. The services rendered by each club were in part to automobiles used for business purposes and, therefore, not operated 'exclusively' for pleasure, recreation, and other similar purposes."

As far as the power of the Commissioner to change the construction of a statute *with prospective effect* goes, Judge Martin, in the Chattanooga case, *supra*, quoted from *Hell-*

*vering v. Wilshire Oil Co.*, 308 U. S. 90, 100, wherein the Supreme Court said:

"The oft-repeated statement that administrative construction receives legislative approval by reenactment of a statutory provision, without material change (*United States v. Dakota-Montana Oil Co.* [288 U. S. 459, 466, 53 S. Ct. 120, 77 L. Ed. 893]) . . . does not mean that a regulation interpreting a provision of one act becomes frozen into another act merely by reenactment of that provision, so that that administrative interpretation cannot be changed prospectively through exercise of appropriate rule-making powers."

All of the above serves only to show clearly in what different lights the judges of the Tax Court, the district court, and the courts of appeals viewed the statute, even when they agreed in their conclusions, and that the interpretation and construction placed upon the statute during twenty-three years by succeeding Commissioners of Internal Revenue, who studied and examined all the various provisions of the Act, repeatedly, intently, and with specific application to the club in question, was a fair interpretation, and, certainly, not plainly erroneous or contrary to the express words of the statute. As such, it cannot be revoked by a succeeding Commissioner with retroactive effect.

It is conceivable, too, that the authorities cited by the government to sustain the changed view of the successor Commissioner, might have also sustained him if he had found it proper to construe the statute in the sense now contended for by the taxpayer. For administrative agencies designated by Congress as specialists in a particular field and advised by experts are, within a wide area, in a better position than a reviewing court to determine appropriate applications of statutes which they are directed to [fol. 255] administer. *National Labor Relations Board v. Medo Photo Supply Corp.*, 135 F. 2d 279 (C. C. A. 2). "The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. . . . The officers concerned are usually able



men, and masters of the subject. Not infrequently they are the draftsmen of the laws they are afterwards called upon to interpret." *United States v. Moore*, 95 U. S. 760, 763.

What is the principle of law to be applied in such cases as the one before us? It is the rule that the doctrine of estoppel must be applied with great caution as against the government and its officials. Some courts have, however, applied general equitable principles to prevent inequitable governmental action, as in suits for refunds, and this doctrine has been denominated "quasi estoppel" by some authorities.

As to estoppel against the government, that principle is summed up in *Ritter v. United States*, 28 F. 2d 265 (C. C. A. 3):

"It is true . . . that when the sovereign becomes an actor in a court of justice, its rights must be determined upon those fixed principles of justice which govern between man and man in like situations. . . . The acts or omissions of the officers of the government, if they be authorized to bind the United States in a particular transaction, will work estoppel against the government, if the officers have acted within the scope of their authority."

In *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Ry. Co. et al.*, 284 U. S. 370, it was held that where the Interstate Commerce Commission had, upon complaint and after hearing, declared what was the maximum reasonable rate to be charged by a carrier, it may not, at a later time, and upon the same or additional evidence as to the fact situation existing when its previous order was promulgated, subject a carrier which conformed thereto to the payment of reparation measured by what the Commission then held it should have decided in the earlier proceeding, by declaring its own prior finding as to reasonableness to be erroneous. In passing upon the case, the court said: "The Commission's error arose from a failure to recognize that when it prescribed a maximum reasonable rate for the future, it was performing a legislative function, and that when it [fol. 256] was sitting to award reparation, it was sitting for a purpose judicial in its nature. In the second capacity,

while not bound by the rule of *res judicata*, it was bound to recognize the validity of the rule of conduct prescribed by it and not to repeal its own enactment with retroactive effect. It could repeal the order as it affected future action, and substitute a new rule of conduct as often as occasion might require, but this was obviously the limit of its power, as of that of the legislature itself."

In *Stockstrom v. Commissioner of Internal Revenue*, 190 F. 2d 283 (C. A. D. C.), it appeared that the taxpayer did not file gift tax returns in 1938 on a transfer to a trust because, under the Commissioner's interpretation, such gifts were of present interests and entitled to a \$5,000 exemption. The omission to file was approved in 1941. However, in 1948, following a Supreme Court decision, the Commissioner decided that the transfers in 1938 were taxable, and he, therefore, assessed a deficiency. The case went off on the question of whether the statute of limitations barred the deficiency assessment. Obviously, if a return had been filed, the deficiency assessment would have been barred. The court held that the Commissioner lacked authority to make the assessment. The holding was put on the ground that one may not found a claim upon an omission which he himself induced. In this regard, the court quoted from Mr. Justice Cardozo in *Stearns Co. v. United States*, 291 U. S. 54: "The applicable principle is fundamental and unquestioned. 'He who prevents a thing from being done may not avail himself of the non-performance which he has himself occasioned, for the law says to him in effect: "This is your own act, and therefore you are not damnified." ' . . . Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate than either waiver or estoppel, the principle that no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong. . . . A suit may not be built on an omission induced by him who sues." The court in the *Stockstrom* case, *supra*, continued: "It has been well said that the government should always be a gentleman. Taxpayers expect, and are entitled to receive, ordinary fair play from tax officials. We regard as unconscionable the

Commissioner's claim of authority to assess a tax in 1948 because of Stockstrom's failure to file a return for 1938, [fol. 257] when the Commissioner himself was responsible for that failure." See also the scholarly and comprehensive opinion of Judge Mathes in *Smale & Robinson, Inc. v. United States*, 123 F. Supp. 457 (D. C. Cal.):

The taxpayer did not have notice, as claimed herein by the Commissioner, during 1943 and 1944, of the pending revocation of its exemption rulings. The Commissioner contends that it had such notice as a result of the opinion expressed in the General Counsel's Memorandum No. 23688, issued in 1943. That memorandum involved the American Automobile Association, which was an organization consisting of other incorporated clubs, and having rules against membership of any individuals. The memorandum held that the term, "club," contemplated individual members and not an association composed entirely of artificial members; and then, although it had no relation to the organization in question, the memorandum went on to say that even if there were individual members, the organizations would not qualify as clubs because there was not a commingling of members in fellowship. Such opinion of the General Counsel, issued in the case of a club composed of a number of corporate clubs, was not notice to petitioner herein of revocation of its tax-exempt status as of the time that the opinion was issued. As a matter of fact, in the Commissioner's letter to the club in 1945, he did not even then notify it of the revocation of its exemption from tax, and had not, at that time, decided to do so. The Commissioner's letter merely informed the taxpayer that the Bureau was reconsidering the question of exemption "in the light of the opinion of the Chief Counsel," and asked for the filing of a questionnaire—consisting of the same information the Commissioner already had in his files from this taxpayer. It is difficult to see how it could be maintained that the taxpayer had notice of the pending revocation of its tax-exempt status in 1943 as a result of the issuance of the Chief Counsel's opinion, when in 1945, the Commissioner first notified the taxpayer that he was only proceeding to take the matter under advisement and to reconsider, at that time, the tax-exempt status of the club. Petitioner had es-

established its own tax-exempt status in accordance with Article 101-1 of Regulation 94,<sup>5</sup> in force during 1938, sub-[fol. 258] mitting to the Commissioner the information required by such regulation. Substantially the same provisions were contained in the regulations in force during 1934 when petitioner first submitted information to the Commissioner in obtaining the first ruling that it was exempt from taxation.

As to Section 3791(b) of the Internal Revenue Code, it would not seem to apply when the Commissioner does not have the power to make a retroactive ruling; and it could hardly be contended that the Commissioner, in such a case as the one before us, had the power to revoke, with retroactive effect, a tax-exempt status theretofore acquired for any period he considered proper, whether for two years or twenty years. Congress had repeatedly, over a period of a quarter of a century, re-enacted Section 101(9) of the Internal Revenue Code, subsequent to the determinations of the various Commissioners that automobile clubs, and peti-

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<sup>5</sup> "Art. 101-1. PROOF OF EXEMPTION.—A corporation is not exempt merely because it is not organized and operated for profit. In order to establish its exemption and thus be relieved of the duty of filing returns of income and paying the tax, it is necessary that every organization claiming exemption file an affidavit with the collector of the district in which it is located, showing the character of the organization, the purpose for which it was organized, its actual activities, the sources of its income and its disposition, whether or not any of its income is credited to surplus or may inure to the benefit of any private shareholder or individual, and in general all facts relating to its operations which affect its right to exemption. To such affidavit should be attached a copy of the charter or articles of incorporation, the by-laws of the organization, and the latest financial statement, showing the assets, liabilities, receipts, and disbursements of the organization. . . ." See also Section 29.101-1 of Treasury Regulation 111, promulgated under the Internal Revenue Code of 1939, as amended by T. D. 5381, 1944 Cum. Bull. 188, 189, and Section 29.101-2, as added by T. D. 5381, *supra*.



tioner club in particular, were tax-exempt. The Treasury's power to make retroactive amendments, changing Treasury regulations or decisions, may not be exercised where Congress has, by repeated re-enactments, given its sanction to the existing regulations. *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U. S. 110. See *Studies in Federal Taxation*, Randolph E. Paul, Third Series, pages 420, et seq., Harvard University Press, 1940. The same principle is here applicable, and a succeeding Commissioner may not retroactively revoke the several prior determinations of his predecessors that petitioner is tax-exempt where Congress has, by repeated re-enactments of the pertinent provision of the statute, given its sanction to such prior determinations. As to the showing of hardship suffered by petitioner through retroactive revocation of its exemption from taxation, the fact that no reserves had been set up for such comparatively large tax for a two-year period, would seem to establish the prejudice that would be suffered by petitioner to its substantial injury, and if the Commissioner [fol. 259] had the right, as he claims, to revoke retroactively petitioner's tax exemption for a possible thirteen-year period, it might well result in complete insolvency of the taxpayer.

Petitioner relied in good faith on the rulings made by the Commissioner in 1934 and 1938 holding it exempt from taxation. In keeping with the instructions received in the ruling letters, petitioner did not file income tax returns, since no change had occurred in the organization of the club, its purposes, or activities; and in reliance upon the tax-exempt rulings, it did not, during 1943 and 1944, set up any reserve or make any other provision to cover the income and excess profits taxes later asserted by the Commissioner for those years. Petitioning club was operated, during 1943 and 1944, in all respects on the premise that it was exempt from taxation. As a result of the retroactive application of his 1945 ruling, the Commissioner asserted a deficiency in income and excess profits taxes for the years 1943 and 1944 in the amount of \$384,059.97.

Under the circumstances above set forth, it seems to me that it would be most inequitable to subject petitioner to payment of the deficiency claimed in this case as a result

of the retroactive revocation of its exemption from taxation—covering a period of a quarter of a century and resulting from repeated rulings of the Commissioners of Internal Revenue in that period. In my opinion, the decision of the Tax Court should be reversed.

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[fol. 260] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 261] SUPREME COURT OF THE  
UNITED STATES, OCTOBER TERM, 1956

No. 89

AUTOMOBILE CLUB OF MICHIGAN, Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE

**Order Allowing Certiorari—Filed October 8, 1956**

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2589-0)